IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DAVID GOODRICH and
COURTNEY GOODRICH,
Individually and as Next Friends of
ASHER LUKE GOODRICH, a minor,
Plaintiffs,
vs. CIVIL ACTION NO. 1:16-CV-03116-TWT
FISHER-PRICE, INC.,
Defendant.
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DEPOSITION OF
PAUL GAUDREAU, JR.
Tuesday, November 28, 2017
10:12 a.m.
Nelson Mullins Riley & Scarborough, LLP
One Post Office Square
Boston, Massachusetts 02109

Laurie K. Langer, RPR

APPEARANCES

ON BEHALF OF THE PLAINTIFF(s):

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ON BEHALF OF THE DEFENDANT(s):

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INDEX OF EXAMINATION

WITNESS: Paul Gaudreau, Jr.

INDEX TO EXHIBITS

(Original exhibits attached to original transcript)

P R O C E E D I N G S

(Deposition Exhibit No. 1 to 4.0 and 1.1 marked for identification.)

MR. HINES: Before we start the deposition of Paul Gaudreau, let me put the following on the record.

As we began the deposition Miss Jan Hinson appeared having filed yesterday afternoon a notice of appearance. There may be a technical issue with that notice having been filed, but on behalf of Fisher-Price we wanted to object to the appearance of Miss Hinson on the basis that under Northern District local Rule 83.1, the Georgia Code of Professional Responsibility is made a part of the practice in the Northern District, and Fisher-Price believes that an appearance as an attorney of record in the case by Miss Hinson violates Georgia code 3.7, in that a lawyer shall not act as an advocate at the trial of a case, particularly when the lawyer is a necessary witness in the case.

And that we want to object to her presence, not only at trial but at other proceedings as being improper and in violation of the rule because of the prejudice that could enure to Fisher-Price as a result.

MR. MOORE: Kevin Moore on behalf of the Plaintiffs. Jan Hinson entered an appearance yesterday and there may or may not be an administrative issue with that. However, it is our position that even pursuant to Rule 3.7 Jan Hinson is entitled under the Code of Professional Responsibility to be a lawyer in the case as long as she is not an advocate and argue the case.

Jan Hinson is the grandmother of the minor child who's the Plaintiff in this action, along with her daughter and son-in-law. And she is a witness in the case.

But it is our legal opinion and the opinion of the State Bar of Georgia through Adrienne Nash, that Jan Hinson has the right to enter an appearance, Jan Hinson has the right to work on this case, Jan Hinson has the right to be present at all hearings and depositions as long as she does not advocate on behalf of the minor child. And it is our position that her presence is not an advocation of, of the case. As long as I am in the case I am the advocate in the case.

And we would disagree respectfully with the position of defense counsel and that these issues, according to the State Bar of Georgia, are left to the trial judge to determine, but that she has a right to be at all hearings and depositions as an attorney having

entered an appearance, as long as she does not advocate the case.

MR. HINES: Just very quickly in response. I would say Mr. Moore has ably prosecuted this case since it was filed in the summer of 2016. Miss Hinson has been operating somewhat in the background of the case, there has never been an effort to appear in the case. And now that we are within two or so months of the close of discovery that an appearance now simply complicates the issues and tangentially is certainly barred through Rule 3.7, but we certainly submit that to the judge for reconsideration.

PAUL GAUDREAU, JR.,

having been satisfactorily identified by the production of his driver's license, and duly sworn by the Notary Public, was examined and testified as follows:

MR. HINES: This will be the deposition of Mr. Paul Gaudreau taken by the Defendant Fisher-Price in accordance with Rule 36 of the Federal Rules of Civil Procedure. Taken pursuant to notice which we will attach as Exhibit 1 to the deposition.

And all objections, except as to the form of question, and the responsiveness of the witness will be

reserved until such time as this deposition might be used in any forum for whatever purpose.

MR. MOORE: That is acceptable. One other item, if I may, he wants to read and sign the deposition.

You have a right to read and sign, do you want to read it?

THE WITNESS: Yes.

MR. MOORE: Okay. May I suggest that since he is so far away and in another state that he can sign before any notary?

MR. HINES: Absolutely.

EXAMINATION

BY MR. HINES:

Q. Mr. Gaudreau, I'm Richard Hines, we met just a moment ago. I will be asking you several questions today. If at anytime you do not understand any of my questions please tell me and I'll be happy to rephrase.

Also, if at anytime I interrupt any of your answers please tell me that you have not answered fully the question because you have that very right.

Also, if at anytime you want to take a break please let us know and we will certainly take a break.

Do you both understand and agree to that?
A. Yes.
Q. Tell us, please, sir, your full name and where you presently reside and by whom you are currently employed.
A. My name is Paul Gaudreau. I live at 350 Ralph Talbot Street in Weymouth, Massachusetts, and I currently work for UPPAbaby.
Q. And how long do you intend to continue to work for UPPAbaby?
A. Indefinitely.
Q. Indefinitely. All right. I understand that you are being then transferred to the Netherlands; is that correct?
A. Yes.
Q. And when are you being transferred to the Netherlands?
A. It's a process. It will take maybe the next six months.
Q. All right. Before I get into some of your background, the Notice of Deposition asked you to bring with you essentially your file?
A. Uh-huh.
Q. Have you done that?
A. Yes.

Q. All right. In your most recent report you enumerate a number of documents by Bates label?
A. Yes.
Q. Are those in that folder?
A. Yes.
Q. All right. Let me do this, let's go off the record, I want to look at what's in there for the time being and that may save us some time.
(Short break taken.)
Q. Is there anything in this notebook that is not now listed on your expert listing as we've just amended it?
A. I don't believe so.
Q. All right. Mr. Gaudreau, while we've been off the record I have gone through your white notebook, and correct me if I am wrong, but now that we have amended Exhibit 3, which is your expert report as amended to include documents Bates labeled 89-105, which is ASTM F3118-15.
Two other -- three other Bates labeled documents that we were going to identify before your deposition is over, which I do not know, which is Bates number 1279 and 1267, as well as 1226.
And also with respect to documents Bates labeled 2034-2047 you also reference that there are attachments

referenced that you are also relying on and have produced.

Does that accurately represent to the best of your knowledge what is in your white notebook?

A. Yes.

Q. In going through the notebook, in addition to that listing, and just so that we've got it all inclusive, I see that you've got a copy of 16 CFR 1500-49 dealing with sharp metal or glass edges in toys and other surfaces; is that correct?

A. Yeah.

Q. You also have a picture of baby Asher in the Fisher-Price Rock 'n Play taken, I believe the record will show, at or about the time of the event that's the subject of this --

A. Yeah.

Q. -- lawsuit.

You've got several pages dealing with federal rules for expert disclosure and then you've got a notice of your deposition.

A. Yes.

Q. With those amendments does that now list everything that is in the white notebook that I now have sitting in my lap?

A. It should, yes.

Q. Other than these documents, are there any other documents that you are relying on in support of the expert opinions that you've given in this case?
A. No.
Q. I'm sorry. No?
A. No.
Q. Let me hand the white notebook and its contents back to you.
My understanding is that you graduated from Western New England College with a BS in mechanical engineering in 2003; is that right?
A. Yes.
Q. All right. I also noticed from your CV that you were employed by Gaudreau Engineering from June 1999 until April of 2007 --
A. Uh-huh.
Q. -- in West Warwick, Rhode Island; correct?
A. Yes.
Q. Were you going to Western New England at the same time you had your business Gaudreau Engineering?
A. It was actually my father's business.
Q. It's your father's business?
A. Yes.
Q. And what type of business is that?
A. Manufacturing efficiencies.

Q. When you say "manufacturing efficiencies" tell me what that is.
A. It's a consulting firm that consults with manufacturing, different types of manufacturing companies. We would go to the company and we may automate a process in which they did manually or figure out ways to improve efficiencies within their processes.
Q. And when you were working for your dad's firm were you also attending Western New England in Springfield?
A. Yes.
Q. All right. So you were physically at Springfield but doing work with your dad at the same time?
A. Yeah. I commuted to school.
Q. I'm sorry?
A. I commuted. I did not live on campus.
Q. All right. And did you take any online courses or any correspondence courses at Western New England?
A. No.
Q. All right. So all of your credits were earned on campus?
A. Yes.
Q. All right. When you -- you worked for your dad for four years after graduation?
A. Yes.

Q. And then what prompted you to go to work for Dorel?
A. My father's business, we were not able to keep each other employed. It was just two of us and right about that time was right about when the market started to downturn. And we couldn't find enough work to keep each other busy.
Q. And when you were at Dorel, what did you do at Dorel?
A. I worked on car seat development.
Q. And when you say "worked on car seat development" what do you mean by that?
A. I was the lead engineer on convertible car seats. So I was responsible for the engineering design and the design for safety.
Q. All right. And I take it during that period of time you became intimately involved with FMVSS 213?
A. Yes, sir.
Q. Why did you leave Dorel?
A. I was unsatisfied with the working environment.
Q. You were living in Indiana at the time?
A. Yes.
Q. All right. And then you moved to IMMI; what does IMMI stand for?
A. Indiana Mills and Manufacturing Incorporated.

Q. And what do they manufacture?
A. The seatbelts and harness systems. They also -- for several industries, including child car seats.
Q. You worked with them from June 2012 through September of 2013; is that correct?
A. Yes.
Q. And why did you leave IMMI?
A. I was unsatisfied with the working environment.
Q. All right. And you went to work with Kolcraft and Contours; is that right?
A. Yes.
Q. What did you do at Kolcraft and Contours?
A. Developed a car seat system. An infant car seat system to be exact.
Q. And when you describe infant car seat are you talking about rear facing car seats?
A. Rear facing car seat for preemie children all the way up to two years old.
Q. And did you work on car beds?
A. No.
Q. No?
A. No.
Q. All right. And why did you leave Kolcraft and Contours?

A. I had an offer from UPPAbaby to move back to Massachusetts where I'm originally from.

Q. All right. And with UPPAbaby, what are you doing with UPPAbaby?

A. My title right now is technical director of car seats. So I lead the development currently of five new programs.

Q. All right. And when you are with UPPAbaby are you working on infant car seats, or?

A. Yes.

Q. Yes. Is that all you're working on or do you work on --

A. Also convertible car seats.

Q. -- adults?

And so that we can understand the difference between infant car seats and convertible car seats, what do you mean by that?

A. Infant car seat is specifically preemie children to approximately two years old. Rear facing only. They have a handheld carrier in which you can carry the infant which clips into a base that is installed in the vehicle.

A convertible car seat also does preemie children up until approximately three years old in a rear facing configuration, and then is allowed to convert to a

forward facing configuration for children approximately two years old up to approximately six years old.

Q. And when you -- when you transfer to the Netherlands what are you going to be doing for UPPAbaby in the Netherlands?

A. Continue in the same role.

Q. But you will be working on products that will conform to European Union standards?

A. As well as U.S. I also work on European products currently.

Q. With respect to infant car seats, are you aware of the angle of the seat back utilized in the design of infant car seats?

A. Yes.

Q. And what is that angle?

A. In order to achieve proper crash performance that angle is at 45 degrees.

Q. All right. And do you know why the angle is established at 45 degrees and not some greater angle?

A. The American Academy of Pediatrics has recommended that children less than one year old not sit anywhere greater than 45 degrees while in a car seat.

Q. And why is that?

A. To maintain airway.

Q. Right. And they believe that below an angle

that, from the horizontal, inscribes an angle of less than 45 degrees does not trigger the risk of compressional asphyxia or airway obstruction?

A. For short periods of time in a car seat.

Q. Let me object to the responsiveness of your answer.

Is that because they do not believe that an angle inscribed from the horizontal at less than 45 degrees does not run the risk of compromising the airway?

A. As I understand the recommendation they allow up to 45 degrees for short periods of time and that should not, not cause positional asphyxia as long as the child is monitored.

Q. Right. Because the AAP believes that at an angle of less than 45 degrees from the horizontal, the head will not drop forward; is that correct?

A. Again, as I believe the recommendation is, describes, this is for a situation of short periods of time, not intended for unobserved children.

Q. I'm not asking about length of time, I'm just asking the reason why the angle of 45 degrees is selected.

The angle of 45 degrees was selected because the AAP felt that that angle was safe in that heads of the infants would not drop forward and compromise the

airways at that angle or a lesser angle; isn't that correct?

MR. MOORE: Let me object to the form.

But you can go ahead and answer, if you know the answer.

A. Okay. I don't believe the answer is as straightforward as a yes or a no in this question. I believe it would be articles that I've read from the AAP. This is -- it's not as straightforward as a yes or a no.

45 degrees was selected for car seats because we need to also maintain crash forces in the car seat, and we need the child to be sitting a little bit more upright. So the recommendation as it pertains to car seats is 45 degrees.

Q. All right. Because the risk is that you, if you reduce the angle less than 45 degrees an infant could be thrown through the shoulders and out of the restraining straps?

A. It increases the amount of forces on the neck and the head.

Q. Right. But -- have you read the AAP publication Safe Transportation of Preterm and Low Birth Weight Infants at Hospital Discharge, by Marilyn Bull, et al, dated -- strike that. Dated in 2009.

A. I've read a lot of publications. I don't recall that one offhand.

Q. Would you agree or disagree with the following statement, "if the rear facing car safety seat should be reclined approximately 45 degrees or as directed by the instructions provided with the car safety seat, if the vehicle seat slopes and the seat is too upright the infant's head may fall forward."

A. Yes.

Q. So that implies that it may fall forward if the incline is greater than 45 degrees, but will not fall forward if less than 45 degrees; isn't that a fair statement?

A. I don't know if I understood it the same way.

Q. Over the last nine years that you've been involved in juvenile products have you ever designed infant inclined sleep products?

A. No.

Q. Have you designed any infant sleep products?

A. No.

Q. Have you ever designed any warnings for incline sleep products?

A. No.

Q. Have you ever designed any warnings for infant sleep products?

A. No.
Q. Have you ever been a member of an ASTM committee or subcommittee?
A. No.
Q. You are not a human factors expert, you are a mechanical engineer; correct?
A. Yes.
Q. You do not consider yourself to be an expert in warnings?
A. No.
MR. MOORE: Let me just object to that question.
Q. You hold patents in juvenile car seats; correct?
A. Yes.
Q. Have you ever designed an infant car bed?
A. No.
Q. You have been involved in the design of rear facing infant car seats?
A. Yes.
Q. And as we've discussed the mandated level of incline in a rear facing infant car seat is 45 degrees; correct?
A. Recommended --
Q. Right.
A. -- level.

Q. Recommended level?
A. Yes.
Q. Have you ever been qualified before as an expert in a court of law?
A. No.
Q. Other than this case have you ever been employed as an expert in a case?
A. No.
Q. Have you ever given a deposition before?
A. No.
Q. How were you contacted to get involved in this case?
A. I believe it was an organization called Expert Institute Organization. And Mr. Moore was looking for an expert and they matched us.
Q. And who contacted you through the Expert Institute?
A. The -- oh, I'm sorry. I don't remember the name of who contacted me from the Expert Institute.
Q. And a terrible question. With respect to contact by any party or attorney in this litigation, who were you contacted by in this litigation to become engaged in this litigation?
A. At first it was the Expert Institute who contacted me, asked me if I was interested, and then

they set up a three-way call between myself, the Expert Institute, and Mr. Moore.

Q. I'm sorry?

A. And Mr. Moore.

Q. And Mr. Moore. Was there anybody else on that phone call?

A. I believe Jan Hinson was on the phone call.

Q. So you were on a three-way call involving Mr. Moore, Miss Hinson, someone from the Expert Institute whose name you do not presently recall, and yourself; is that fair?

A. Yes.

Q. All right. And what was the scope of the engagement at the time of your engagement by the participants in that phone call?

A. They gave me a little bit of background on the case, asked me if, one, I understood the situation and if I could discuss the situation pertaining to the back angle of the child. And the positional asphyxia. I agreed that I could discuss that intelligently and that was about the first call.

Q. And do you know when that contact took place?

A. I think it was late summer.

Q. All right. And then you first rendered a report in this case dated September 29, 2017; is that correct?

A. Yes.
Q. All right. And do you know how much time you spent on this case between the time of your initial engagement and the time you rendered your first report in September of, late September of 2017?
A. Approximately four hours.
Q. Approximately four hours?
A. Yeah.
Q. And with respect to the material that you relied on in forming your initial report dated September 29, 2014; what material did you rely on in forming that report?
A. Primarily the articles from the American Academy of Pediatrics.
Q. Primarily the article from?
A. Articles.
Q. Okay. And what are those articles that you were relying on?
A. They're here in this folder.
Q. Okay. Can you just go through there and tell me which of the American Academy of Pediatric articles you relied on in forming your initial report?
A. Sure. Can I go through the book?
Q. Sure. And off the record.
(Short break taken.)

Q. Would it be fair to say in the mid '90s medicine started taking a look at airways in preemies and newborns and determined that car seats imposed, as then constructed, that the car seats in the 1990s imposed a risk of airway compromise in preemies and newborns?

MR. MOORE: Is that a question?

A. You're asking me a question?

Q. Yeah. Would that be fair to say?

A. Would that be fair to say that happened in the '90s?

Q. Right. Based on your reading of the medical literature.

A. I believe -- I would believe so.

Q. All right. And what did industry do in response to that concern?

A. I think it depended on the manufacturer.

Q. What is your understanding of what the industry did?

A. Well, I wasn't in the industry in the '90s.

Q. From -- you've been in the industry, though, for the last nine years?

A. Nine years, yes.

Q. And what is your understanding of the changes that took place up until the time that -- I'm just asking for your understanding.

A. Right.
Q. What is your understanding of what took place during that period of time?
A. I think a lot of companies became aware that the positional asphyxia was an issue in car seats. But in order to maintain crash loads we needed to be at 45 degrees. So the adding of infant inserts and other types of padding and mechanisms inside the seat to allow the child's head to rest back and keep the airway open.
Q. Right. And the Fisher-Price Rock 'n Play is not a car seat, is it?
A. No, it is not.
Q. All right. The angle imparted by the Rock 'n Play is 30 degrees, not 45 degrees or greater; correct?
A. Yes.
Q. None of the articles that you have cited to me in any way addresses incline sleep products; do they?
A. No, they do not.
Q. None of these articles study infants at an inclined angle of 30 degrees; do they?
A. I don't believe so.
Q. All right. Do you have an understanding of what the range of normal oxygen saturation in a preemie is?
A. I believe it's to be in the low 90s.
Q. Do you have an understanding of what a range of

normal for -- strike that.

Are you familiar with the oxygen saturation hemoglobin curve?

A. No, sir.

Q. Before your September 29, 19 -- excuse me. Before your September -- we had a different decade here. I'll strike that.

Before your September 29, 2017 expert report, did you read the AAP's SIDS sleeping guidelines that I don't believe you referenced just a moment ago?

A. Yes. I did read that, yeah.

Q. What is your understanding of what the 2011 sleep guidelines provide with respect to incline sleeping?

A. I believe it recommends a maximum angle of 5 degrees from horizontal.

Q. And tell me the basis for that statement.

A. I don't understand. What do you mean the basis?

Q. You say that with respect to incline sleep products that they recommended incline sleep products up to 5 degrees; where do you get the 5 degrees?

A. I believe it doesn't actually say, "incline sleep products," but it says, "proper sleeping for children." A maximum of 5 degrees.

Q. Does it ever say 5 degrees?

A. I believe so. Can we reference the document?

Q. Can you show me where?
A. Yeah. What document -- do you know the number so I can find it quickly?
Q. I don't think it's in there. Off the record.
(Discussion off the record.)
(Deposition Exhibit No. 5 marked for identification.)
Q. I hand you Exhibit 5 and if you would review Exhibit 5, and we'll go back on the record, and tell me if in there it ever provides for inclined sleeping at 5 degrees.
A. (Witness reviewing.) I honestly don't see it referenced. I can keep reading the entire thing, but I don't think it is going to reference sleep products, but it does clearly say sitting devices like car safety seats, infant carriers, and infant slings are not recommended for routine sleep in hospital or at home.
Q. We stated earlier, and you have agreed with me, that the Rock 'n Play is not a car seat; correct?
A. No, it's not. But this mentions several other products.
Q. It is none of those products either; is it?
A. I think it could be construed as an infant sling.
Q. Who would construe it as an infant sling?
A. What would your definition of infant sling be?

Q. Well, what would your definition be?
A. It would be a hammock-like device.
Q. This is not a hammock, is it?
A. In essence, I believe it to be a hammock.
Q. Why do you say it's a hammock?
A. It has metal tubing around with a fabric inlay that the child sits inside that fabric inlay.
Q. But isn't there a plastic body form insert that removes it from the definition of a hammock?
A. I don't believe so. But potentially. But this also says "seating devices." I believe it to be a seating device at the very least.
Q. Isn't it what you have now referenced for the first time in your report an incline sleep product governed by ASTM 3118-15 and 3118-17?
A. That regulation exists and it is classified as an incline sleep product.
Q. Right.
A. But I believe it also to be considered a sitting device.
Q. Who else other than you would believe that?
MR. MOORE: Object to the form.
THE WITNESS: Do I answer that question?
MR. MOORE: No, you can answer it if you know. He's asking you to speculate, so. If you can

answer it, fine. If you can't tell him you can't.
A. Yeah. If I answer that it would be speculating.
Q. Other than yourself are you aware of anyone who has ever characterized an incline sleep product similar to the Fisher-Price Rock 'n Play as a hammock?
A. That would be speculating if I named somebody.
Q. Because you don't know; isn't that correct?
A. No. I don't believe so. Without talking to them first or asking them.
Q. Well, that's my point.
A. But I would believe them --
Q. Right. As you sit here today --
A. Uh-huh.
Q. -- you have not heard anyone other than your own opinion describe the Fisher-Price Rock 'n Play as a sling or as a hammock; is that correct?
A. I guess I would -- yes. Yes.
Q. To the contrary, you have seen that it conforms to an ASTM standard for incline sleep products and it is not denominated either a sling or a hammock in that ASTM standard; isn't that correct?
A. Yes, that's correct.
Q. So if we talk about this, because at the time of its creation it fell within the crib, bassinet standard of the ASTM; isn't that correct?

A. I don't know. I didn't work for Fisher-Price when this item was created.
Q. I'm sorry?
A. I didn't work for Fisher-Price when this was created, so I don't know --
Q. I understand.
A. -- what it fell under when they created it.
Q. I understand that. But you have been engaged as an expert witness in this case.
A. Uh-huh.
Q. You have the Internet and every resource in the world available to you --
A. Uh-huh.
Q. -- to determine ASTM standards that were in place at the time of the development of the Fisher-Price Rock 'n Play; do you not?
A. Yes.
Q. All right. And did you look to see what ASTM standard was in force and effect at the time of the development of this product?
A. Yes. The bassinet standard was in effect.
Q. The crib and bassinet standard was in force and effect; correct?
A. Yes.
Q. Because you had seen the set of testing that has

been done on the Fisher-Price Rock 'n Play?

A. Yes.

Q. That shows that the ASTM Rock 'n Play conformed to the ASTM standard F2194-07, which was the ASTM standard in force and effect at the time of the development and production of the R6070 Fisher-Price Rock 'n Play; isn't that correct?

A. Yes.

Q. So that the product conformed to a crib and bassinet standard, it did not attempt or it was never tested to conform to a car seat or a sling or a hammock standard; isn't that correct?

A. Yes.

Q. All right. So let's define this product then as something that fell within and is more properly determined to be an infant sleep product conforming to crib and bassinet standards at the time it was developed.

A. Uh-huh.

Q. All right. That being the case, you will agree with me, will you not, that the Fisher-Price Rock 'n Play conformed to and passed the third-party testing performed on it in order to determine whether or not it conformed to ASTM standard F2194-07?

MR. MOORE: I object to the form.

A. Can I review the standard again?
Q. Say again?
A. Can we review the standard again?
Q. Sure.
A. (Witness reviewing.) This is the one we're talking about; right? F2194-10?
Q. No. No. That was after the development of the standard. I'm talking about F2194-07.
A. That one I don't believe I have. I don't believe I have that standard.
Q. You do not have that standard.
If you look at the third-party testing that you have produced, that you have relied on in this case, which is a Mattel Asia Pacific Sourcing Production Summary produced at Bates labeled pages 115-180. You've got that before you, do you not?
A. Yeah, I should have that. (Witness reviewing.) 180?
Q. Starting at 115 through 180.
A. Yes.
Q. All right. And what does that standard show -- excuse me.
What is the standard to which that product is being subjected?
A. It does say it meets the standard.

Q. Pardon me?
A. It says it meets the standard.
Q. Right. And what standard does it say it meets?
A. ASTM F2194-07.
Q. Dash 07. Right. And you did not in preparing your expert report and your opinion in this case, you did not look for ASTM standard F2194-07, did you?
A. No. I looked at the most recent.
Q. Pardon me?
A. I looked at the most recent.
Q. All right. But that testing -- and Bureau of Veritas is a respected third party independent testing laboratory; correct?
A. I'm not familiar with this bureau.
Q. You're not familiar with Bureau of Veritas --
A. No.
Q. -- as a third-party testing?
Do you have products subjected to third-party testing?
A. Yes.
Q. And what are the products at UPPAbaby?
A. We use SGS.
Q. I'm sorry?
A. SGS.
Q. SGS. And that's also a group used by

Fisher-Price and that's a respected group as well; is it not?

A. Yes. There's an SGS report here.

Q. Pardon me?

A. There are SGS reports in here as well.

Q. Right. And that's the very testing agency that you use; correct?

A. It is, yes.

Q. So that's respected. And it was found to conform to that standard; correct?

A. Yes. Based on this. So this has been identified -- (Witness reviewing.) This actually says it was submitted as a gentle rocking hammock.

Q. All right. And then -- but it passes the crib and bassinet standard; correct?

A. This was tested for toxicity.

Q. Go all the way through, if you look at the Bureau of Veritas report and all the others it is tested to conform to the various requirements of F2194; correct?

A. Yes. If I look at the Bureau of Veritas it does apply to that standard.

Q. Right.

A. Yes. But if we look at the SGS report, I'm pointing out that the client, meaning Fisher-Price, called the product a hammock.

Q. That was before that was marketed; correct?
A. August 2009.
Q. Right. The product, however, described in, in one note on one page is still passed by SGS and other third-party testers as a product that complies with the crib, bassinet standards; --
MR. MOORE: Object to the form.
Q. -- correct?
A. This SGS report in which it's called a hammock is only a toxicology report.
Q. All right.
A. This does not talk about the bassinet standard.
Q. Say again.
A. This does not reference the bassinet standard, it only talks about the toxicology chemical testing.
Q. Because they were concerned about oxygen saturation, were they not? And also --
A. No.
Q. -- the lead paint --
A. This is just --
Q. -- and product emissions?
A. This is material.
MR. MOORE: Object to the form.
Q. Right. Material emissions?
A. Material toxicology.

Q. Right.
A. Not oxygen saturation.
Q. I'm sorry. I misspoke. Well, I want to express a concern that Fisher-Price may have had, but what they were looking to was to ensure that the products that were the mesh-type products that were a part of the Rock 'n Play complied with the toxicology requirements governing those types of products for infants; correct? Those types of materials.
A. This is a chemical test of all materials in the entire product, yes.
Q. Right. You don't have mesh in a crib, do you?
A. Yes.
Q. Huh?
A. Yes. There are some cribs with mesh.
Q. There are some cribs that would have it?
A. Yes.
Q. But there are no mesh tests in F2194; correct?
A. There are material tests. Regardless of what the material is, there's a material test.
Q. Those -- right. I won't -- all right.
Now, let me go back to the 2011 ASTM -- excuse me. 2011 AAP statement.
A. Uh-huh.
Q. You will agree with me, will you not, that

nothing in the AAP 2011 standard provides for a 5-degree sleeping angle?

A. We're talking about this one right here (indicating.)

Q. Yes.

A. Could you repeat the question.

Q. Yes. There's nothing in the American Academy of Pediatrics statement of 2011 that provides for a 5-degree sleeping angle?

A. It says that the child should be flat on their back. It doesn't say any angle at all.

Q. Right. And is there a statement anywhere in the world's literature that you have ever read that says that inclined sleeping in and of itself enhances the risk of SIDS?

A. Of SIDS specifically? No.

Q. Of SIDS.

A. Yeah.

Q. That's question number one.

Have you ever seen an article anywhere in the world's medical literature that suggests or states that elevated sleeping at a degree of 30 degrees or less increases the risk of an apparent life threatening event?

A. Not as specifically as that, no.

Q. Have you ever seen a statement in the world's medical literature that says inclined sleeping at 30 degrees or less increases the risk for a brief resolved unexplained event?

MR. MOORE: Let me just object to the terminology "in the world's medical literature."

To the extent you have any idea what that is you can answer his question.

A. Yeah, that's quite broad. I don't.... I'm sorry, can you ask the question again. I'm not sure I understand it.

(Prior testimony read back.)

"Have you ever seen a statement in the world's medical literature that says inclined sleeping at 30 degrees or less increases the risk for a brief resolved unexplained event?"

A. I guess I'm not understanding what a brief resolved unrelated event is.

Q. Have you ever heard of that before?

A. Are you talking about a loss of breathing, like -- yeah. I guess that's what you're referring to; right?

Q. Have you ever seen the term before I've asked you

the question today, BRUE, B-R-U-E, also known as a brief resolved unexplained event?

A. Sorry. Yes. I understand what that is. No, I haven't heard of -- I haven't read any medical literature that I know of that would say 30 degrees or less would cause that.

Q. All right. Have you ever seen a statement in the world's medical literature that says that inclined sleeping at 30 degrees or less increases the risk of airway compromise?

A. I believe that some of those documents there in the pediatric journals have said that infants should not sleep at inclined angles. It doesn't specifically say 30 degrees, but I don't believe it specifically calls out any angle. And it has shown to decrease oxygen saturation.

Q. None of those articles ever test a product that induces an inclined sleep angle of 30 degrees or less; isn't that correct?

A. I don't know. I'm not sure of every product that was tested in those documents.

Q. Well, you've read these; correct?

A. Yes.

Q. And you're holding yourself out as an expert on sleep products; correct?

A. Yes.
Q. And you've never seen an article anywhere that says that inclined sleeping at 30 degrees or less increases the risk of airway compromise?
A. I don't know the back angle degrees of the products in those, in those papers.
Q. You will agree with me, will you not, that car seats induce an angle of at least 45 degrees?
A. At least?
Q. At least 45 degrees.
A. Yeah. Up to 35 degrees it looks like.
Q. Well, we'll come down off of the -- it depends on which way you measure it?
A. That's what I'm trying to say.
Q. You're measuring the vertical or the horizontal. I'm measuring from the horizontal.
A. Okay. So from the horizontal, yeah. From the horizontal it could be up to 45 degrees. In a car seat. There are plenty of car seats out there that are, there are some that are less than 45 degrees.
Q. The problem is that you then run into the issue of neck and shoulder compromise if it's less than 45 degrees.
A. I'm not familiar with those specific products and the testing that happened in those products. I can only

speak for --
Q. But you were familiar with -- that is the concern that's been voiced and it is for that reason that the minimum angle from the vertical --
A. Uh-huh.
Q. -- or the horizontal is 45 degrees?
A. 45 is a recommended back angle in order to help manage the crash forces.
Q. Right.
A. Those crash forces could be managed in other various ways, so I can't speak for every car seat out there to say they're all exactly at 45 degrees.
Q. I'm not asking you to. I'm saying based on your understanding --
A. Uh-huh.
Q. -- they induce an angle of approximately 45 degrees, whereas, the Rock 'n Play Fisher-Price sleeper induces an angle of 30 degrees. 15 degrees less.
A. I can speak for the products I've worked on. I can't speak for every product out there.
Q. Products you've worked on induce an angle of approximately 45 degrees for your car seat products; correct?
A. My products, yes.

Q. Right. And the Fisher-Price angle is 30 degrees; correct?
A. Yes.
Q. And it's your understanding because we've already gone over the AAP recommendation --
A. Uh-huh.
Q. -- that at 45 degrees you do not run the risk of airway compromise based on the recommendation of the AAP guidelines for car seats?
A. I believe the last time you asked me that question I said it wasn't a very straightforward answer; correct? So the recommendation is at 45 to maintain airway and maintain crash performance. 45 on a car seat happens to be the best compromise; right? So -- yeah.
Q. Before this engagement have you had any training, education, or experience in infant airway compliance?
A. Nothing formal. No.
Q. Are you familiar with the anatomy of the airway, upper airway?
A. Yes.
Q. And what does that consist of?
A. The trachea.
Q. Right.
A. You're referring to -- yes.
Q. And tell me about the trachea. Do you know

anything about maturation of the trachea? Have you read articles on the maturation of the trachea?

A. Yes.

Q. And what have you read?

A. Pertaining to infants that the trachea is quite small and quite flexible.

Q. And does it mature after birth?

A. As does everything else, yes.

Q. Right. Do you have any understanding of the maturation rate of the airways after birth of the --

A. I'm not familiar with the maturation rate.

Q. Have you seen any studies on them?

A. I believe I've read some articles on it, yes.

Q. When did you read articles on it?

A. It would have been several years ago.

Q. With respect to positional asphyxia, tell me about your training, education, and experience on infant positional asphyxia in sleep products.

A. Anything that I would have learned on that would be pertaining to car seats and keeping the infants in car seats for a longer term. Not sleep products. We do not recommend children to sleep in car seats.

Q. I'm talking about -- my question dealt with infant sleep products. And before your engagement in this case you've had no training, no education, or

experience in infant sleep products; that is correct?
A. Other than seeing presentations at conferences, no.
Q. And before your engagement in this case, you've had no training, education, or experience with respect to positional asphyxia in infant sleep products?
A. I have not had any specific training, yet I have read various articles and have seen various presentations on positional asphyxia.
Q. All right. I understand positional asphyxia in general. My question is limited to positional asphyxia in infant sleep products.
A. I have seen presentations on that topic.
Q. Where?
A. At several conferences.
Q. Which conferences?
A. Tüv Süd conference in Munich, which is entitled The Protection of Children in Cars. And I've also seen at the KIM conference, which is Kids in Motion.
Q. And who put those presentations on?
A. The Tüv Süd conferences in Munich, Germany I can't recall the physician's name at this moment.
The other one is from a physician in Seattle that was at the KIM conference. I'm sorry. I can't recall his name at this moment.

Q. And what was the subject matter of their presentation on positional asphyxia in infant sleep products?

A. The one in the KIM conference -- sorry. The one in the Munich conference was the Tüv Süd conference. That one was on positional asphyxia in sleeping infants. So it covered sleep products as well as car seats. There was a car seat conference with that in mind.

Q. And what was the concern about positional asphyxia in a sleep product?

A. The talk was very specifically about the difference between the protrusion in the back of the head versus the plane at which the back rises, lays at. In talking about how the head, since it protrudes beyond the back plane, can allow the child's head to be pushed forward causing the chin to make contact with the chest.

And the talk was saying that this could be exaggerated by car seats in particular because the child is now sitting at an angle.

Q. Well, that's precisely the reason that you were concerned about an infant sitting at a 60-degree angle which was the angle of some of the old car seats; correct?

A. Yeah, it was part of that, yes.

Q. Because your head at 60 degrees has a tendency to

fall forward and that was the reason that the AAP recommended 45 degrees because they felt that at 45 degrees the tendency was not for the head to fall forward; correct?

MR. MOORE: Objection to the form.

Q. Correct?

A. I'm sorry. Can you repeat that, again.

Q. Sure. The concern that was articulated was that infants at a sitting angle of 60 degrees had a tendency for their head to drop forward from chin to chest, and that is the reason that the AAP decided that the recommended angle for infants in car seats would be 45 degrees, because at 45 degrees there was not the tendency of the head to drop forward from chin to chest?

A. I believe the recommendation is that there is less chance of the chin drop, we've talked about it already, there's a gray area there. This is a compromise on crash performance as well as airway management.

Q. The article we just looked at from the AAP directly addresses that, right, and it speaks for itself?

A. Yes.

Q. You don't know anything beyond that from the AAP, do you?

A. No.
Q. Before this engagement had you ever read F2194?
A. Can you tell me the name of that other than the number? Sorry.
Q. The crib, bassinet standard.
A. Have I read the crib, bassinet standard?
Q. Before your engagement in this case.
A. Yes.
Q. When?
A. Probably 2008.
Q. And why did you have occasion to read it in 2008?
A. When I started working with Dorel there was the opportunity that I was going to work in cribs and bassinets rather than working in car seats.
Q. But you did not work in cribs and bassinets, did you?
A. I eventually did not, no.
Q. So other than perhaps reading it in 2008 you've not had any prior experience with F2194?
A. No.
Q. And prior to your engagement in this case have you read -- well, strike that.
In 2008 you would have read F2194-07; correct?
A. I'm not exactly sure which -- I'm not sure.
Q. Do you know the progression of the F2194

standards from the moment of their first inception up to the current time?

A. No.

Q. Do you know the progression of standards for incline sleep products?

A. No.

Q. Do you know whether or not there's any activity from the CPSC with respect to incline sleep products?

A. No. I'm not up to speed with what's going on with CPSC.

Q. Pardon me?

A. No.

Q. With respect --

A. May I grab a water, please?

Q. Sure.

MR. MOORE: If you need to take a break let me know.

A. Go ahead.

Q. Do you know who makes up the membership of the ASTM Committee F15?

A. Currently who is sitting on the?

Q. The general constituency of an ASTM committee.

A. Yeah, it would be by the manufacturers.

Q. And who else?

A. And the JPMA.

Q. Pardon?
A. The JPMA.
Q. And who else?
A. I'm not aware.
Q. Do you know?
A. No.
Q. Do you know that there are advocacy groups on the ASTM committee?
A. Yeah. Yes.
Q. Do you know that the CPSC members sit on ASTM committees?
A. Yes.
Q. So that on ASTM committees you have both manufacturers and consumer advocates; do you not?
A. Yes.
Q. And the goal of ASTM is to create an agreed upon standard that would provide safe environments for children using the products that become the subject matter of ASTM standards?
A. Yes.
Q. You've said that although you didn't have it in your, in your book you had read that 2011 AAP SIDS sleep guidelines; correct? And that's the document we've marked as Exhibit 5, I think?
A. This one, yeah. Yes.

Q. Is that the -- is that the only AAP guideline you have read on safe sleep and SIDS?
A. Well, I believe I -- all of those documents there, in essence are talking about, not SIDS particularly, but safe sleep; right?
Q. Right. I'm talking now about the document that is being relied on in this case to say that inclined sleeping is not approved by the AAP and that -- are you taking the position that the 2011 statement does not say that?
A. This statement here does say that the child should sleep flat.
Q. All right. And what does it say about inclined sleeping, if anything?
A. I thought there was a line here. I'm trying to find it. "Elevating the head of the infant's crib while the infant is supine," supine would be lying on its back, "is not recommended, so."
Q. Where is that in the statement?
A. Section A here. 1A, Recommendations. Back to sleep for every sleep (Witness reviewing.)
Q. All right. And that references a footnote, does it not? That statement.
A. Yes. Footnote 11.
Q. And have you read Footnote 11?

A. I don't recall.
Q. An article by Tobin, I believe. Have you ever read the article referenced in Footnote 11?
A. Yeah, it's part of the gastral reflux.
Q. Pardon me?
A. It's about reflux, yes.
Q. You've read the Tobin article in Footnote 11?
A. No, I have not read that article.
Q. All right. Have you read the technical report that goes along with the 2011 abstract and policy statement that you have in your hand as Exhibit 5?
A. I believe so.
Q. That's not in the materials that you have produced.
A. No.
Q. When would you have read the technical report for the 2011 policy statement?
A. This would have been -- this would have been a while ago. It would have been a while ago. I'm not exactly sure.
Q. All right. And have you ever read the policy statement from the AAP that preceded the 2011 policy statement? From the SIDS group on sleeping environment.
A. No.
Q. Do you know when that was published?

A. No.
Q. Have you ever talked to any medical doctors about the meaning and purpose of the AAP sleep guidelines?
A. Yes.
Q. Who?
A. Dr. O'Neil, Dr. Marilyn Bull. Joe O'Neil is in Indianapolis.
Q. When did you talk to them?
A. It would have been 2010, 2011. I met with Marilyn Bull on several occasions, also of Indianapolis.
Q. And what did those discussions consist of?
A. They just -- we talked about the idea that parents were leaving children in car seats for quite a long time. That children did not breathe appropriately in car seats. We did some very informal testing on children getting released from the pediatric ICU in car seats and what their oxygen saturation was.
We also developed together an insert that would go into the car seat in order to allow the head to drop back and keep the airway open at the 45 degrees that we need to maintain for crash performance.
Q. So you were holding it back from what degree to 45 degrees? From 60 degrees?
A. We were keeping the child at 45 degrees.
Q. Right.

A. For crash performance. But the insert that we developed raised a child's back in parallel to that 45 degrees 1 inch up, allowing the head to maintain its position back keeping the airway open.

Q. And what degree was that head maintained at?

A. Well, the neck would be at 45 degrees.

Q. Right.

A. Right. But that's only achievable by raising the, raising the back up approximately 1 inch.

Q. And you felt that 45 degrees was a safe angle and eliminated the issue of airway compromise?

A. When allowing to let the head fall back 1 inch.

Q. Right.

A. If the head is not allowed to fall back. If the head is kept at the same plane, the same 45-degree plane as the back angle, we did notice airway compromising.

Q. Was that product that you just talked about ever patented?

A. An application was filed.

Q. Has that patent been granted?

A. The company that I worked for at the time decided not to pursue the patent.

Q. All right.

A. But, yeah. I believe that patent application is in my CV as well.

Q. Other than that discussion having to do with car seats and issues with car seats, and we've already agreed that the Rock 'n Play is not a car seat; have you had any discussions with anybody about the AAP 2011 standard as it relates to incline sleep products?

A. No.

Q. So your understanding of what the 2011 AAP guidelines comes from is your own reading of the 2011 guidelines?

A. I'm sorry. Can you ask that again.

Q. Sure. Your understanding of the meaning and purpose of the 2011 AAP guidelines comes from your, that is Paul Gaudreau's reading of the 2011 AAP sleep guidelines?

A. As well as my conversations with Dr. O'Neil and Dr. Bull.

Q. Right. And those had to do with car seats, they did not have to do with incline sleep products; correct?

A. Okay. The discussions were about children sleeping inclined in car seats.

Q. And when you sleep inclined in car seats you can be sleeping at a 60-degree angle, because a lot of car seats are built at 60 degrees; correct?

A. I don't know any rear facing car seats that are built at 60 degrees.

Q. An older -- take the infant out. If you -- let's go back. Earlier on they were at 60 degrees?
A. Well before me.
Q. Well before you?
A. Yes.
Q. And then they determined 60 degrees was not safe due to compressional asphyxia and other potential airway compromise?
A. Right.
Q. And we talked about 2010 today and we won't beat that dead horse one more time. It was determined that 45 degrees would be an appropriate angle of safe sitting and posture and sleeping because children sleep in car seats all the time?
A. No.
Q. No?
A. No.
Q. You're telling me that children don't fall asleep in a car?
A. Potentially they may. But our --
Q. Parents don't drive children around in car seats so they'll go to sleep at night?
A. I don't know. I'm not a parent. I don't have a child. But I do know that we put warnings on all car seats, have warnings to not allow the child to sleep.

Because the 45 degrees is a compromise.
Q. Who have you talked to about the event of July 25, 2014 with Asher Goodrich?
A. I talked to that with Jan Hinson as well as Kevin Moore.
Q. Have you read any depositions in this case?
A. Yes.
Q. All right. That's not on your expert disclosure. What depositions have you read?
A. I read a portion -- I'm sorry. I read a portion of the one this morning from Dr. --
MR. MOORE: Benarude (ph.)
A. Yeah.
Q. Did you have the entire deposition or were you provided portions of the deposition?
A. I had the entire deposition.
Q. And were you provided areas that you should look at?
A. No.
Q. So you said that you've read portions of it. How did you pick out what portions you were going to read?
A. I was skimming through it.
Q. What did you learn?
A. I didn't have enough time to read all of it.
Q. Right.

A. Yeah.
Q. A long deposition.
A. Yeah. Yeah. Yes.
Q. Other than reading Dr. Benarude's deposition --
A. Yeah.
Q. -- or parts of it, skimming it, --
A. Yeah.
Q. -- did you take notes?
A. No.
Q. Did you have any specific memory or anything that you feel is important from which you read in that deposition?
A. No. To be honest I can't even recall exactly what I read.
Q. All right. So if I ask you if you base anything, any opinion that you have in your case on Dr. Benarude's deposition testimony your answer would be no, I am not basing anything --
A. No.
Q. -- I'm saying in this case on Dr. Benarude's testimony; is that correct?
A. That's correct.
Q. Other than skimming Dr. Benarude's deposition have you read or skimmed any other depositions taken in this case?

A. No.
Q. Have you talked to Mr. or Mrs. Goodrich?
A. No.
Q. So the only, quote, witness or person involved in the incident that you've talked to was Jan Hinson; is that correct?
A. That's correct.
Q. And what was that conversation all about?
A. She gave me a history on the event, on what happened.
Q. All right. Have you read any medical records in this case?
A. No.
Q. Are you aware of any discharge instructions that were given to the parents when they were discharged from the Children's Hospital of Atlanta with respect to elevating the bed?
A. No.
Q. Would you have any reason to disagree with discharge orders that provided for elevating the crib of Asher Goodrich upon discharge?
A. Would I disagree with that?
Q. Yes.
A. Based on the studies that I've read I don't understand why they would recommend that.

Q. Are you familiar with gastroesophageal reflux precautions?
A. Yes.
Q. Are you familiar with precautions that provide for elevating the bed up to 30 degrees?
A. No. As a matter of fact, if you read this report here it says not to raise the bed.
Q. Yeah, that's what that says. But that's not --
MR. MOORE: You're referring -- you've got to tell me which article.
A. I'm referring to the AAP article from 2011.
Q. Right. So the orders at least, if what I'm telling you is correct, and I won't suggest to you that it is, if the orders of the Children's Hospital of Atlanta at Egelson Hospital were to elevate the bed, that would be contrary to what the AAP says; correct?
A. Could be, yes.
Q. But then again the AAP is just a recommendation; correct?
A. Yes.
Q. It carries no force of regulation; correct?
A. Yes.
Q. It's a statement by four people; correct?
A. Yes.
Q. It's not peer reviewed; correct?

A. I don't know.
Q. You have no idea one way or the other whether that statement is peer reviewed?
A. It's my understanding that anything that's published in the AAP Journal of Pediatrics is peer reviewed.
Q. Do you have any understanding that the policy statements issued by the SIDS committee in November of 2011 was peer reviewed by anyone other than the four committee members?
A. It would be my understanding that it would have been peer reviewed.
Q. And what is the basis of that understanding?
A. My understanding is that anything that would be published by the AAP would have a peer review before it could be published.
Q. And where did that understanding come from?
A. From several of the doctors that I've talked with. Several pediatricians. I believe Joe O'Neil actually is a peer reviewer for the pediatrics journal.
Q. Do you know a peer reviewer on any committee?
A. I believe so.
Q. Do you know what committee?
A. I don't recall.
Q. Certainly not on the SIDS committee. If you look

at the last page before you get to the footnotes, there are four doctors listed as having authored that opinion; correct? Before the footnotes.

A. (Witness reviewing.)

Q. If you go before the footnotes.

A. (Witness reviewing.) I'm sorry. The question again?

Q. Yes. That article shows that it was authored by four physicians; correct?

A. Yes.

Q. It does not show that it was peer reviewed by anyone?

A. It does not.

Q. All right. Have you talked to any design engineers in connection with your opinions about infant sleep products in this case?

A. No.

Q. In connection with the opinions that you have in this case have you talked to any infant sleep product manufacturers?

A. No.

Q. Have you talked to any engineers with any infant sleep product manufacturers?

A. No.

Q. Although you have read some articles on car seat

oxygen saturation, you do not pretend to be an expert in pulmonary blood saturation?

A. No, I'm not.

Q. All you've done is read those articles?

A. Yes.

Q. Before this engagement have you had any training, education, or experience with shapes of infant sleep products?

A. I have, again, seen some presentations at conferences about this. But no formal training.

Q. Have you seen -- do you have any training, education, and experience on infant skulls resting against hard surfaces?

A. Other than what I've seen at presentations and I've heard at conferences, no.

Q. Do you have any training, education, or experience in the areas of infants whose heads are against hard surfaces reacting to those surfaces and changing positions?

A. Are we referring to flathead syndrome? Is that what you're referring to?

Q. I'm not talking about plagiocephaly, no.

A. I'm not clear what you're trying to ask.

Q. Right. Do you have any training, education, or experience on the effect of infant skulls resting

against hard surfaces and it causing a baby to turn its head for relief?

A. Yes.

Q. And what is that in?

A. With -- as far as my experience with infant seats, that is something that we always look for, yes. And that was part of the development of the infant insert that I developed.

Q. That was never taken beyond your development stage?

A. No. We applied for the patents and we -- no. It's only been applied for, yes.

Q. Before this engagement do you have any training, education, or experience with infants in incline sleep products and whether such products induce a positional list that compromises the airways?

A. Not in products designed for infant sleeping, but within car seats, within infant car seats.

Q. I've brought lunch.

(Discussion off the record.)

Q. When you say that you've had some experience in infant car seats with infant skulls -- strike that.

Let me start over. When you say that you've had experience in infant car seats with infants' heads listing in a fashion that compromises the airway, what

is your experience?

A. When developing an infant car seat we do fit studies usually in the hospital with various sized newborn infants. We put them in the seat, we see how they sit, how the airway looks, and how the head decides to roll. And my experience, when there isn't a space behind the child's head to allow the head to dip below the plane of the back, the child will roll to one side or the other side by gravity.

Q. When you say that the child will roll, the child doesn't roll, --

A. Sorry.

Q. -- the head might?

A. The head might, yes.

Q. The head may drop to one side?

A. Yes.

Q. Because infants up to about three months of age can't even raise their head; correct?

A. They do not have control of their head, yes.

Q. They cannot raise their head?

A. Right. So you'll see either the head drop where the chin touches the chest or the head lists over to the side.

Q. When we say "list" we don't mean in a severe angle, you've got -- your head is not sitting on a

bobble head, it's sitting on a spine.

A. Right. Yes.

Q. And so the spine and limited musculature of an infant will, generally speaking, hold the infant in place?

A. The head is not going to fall into his lap.

Q. Right. And have you read -- well, you haven't read Mrs. Goodrich, but she described that Asher, not in any way denigrating Asher, but when you put Asher down he was like a lump of coal.

Many parents experience children at young ages below two months, you put them down and they'll be in that same position this time next year if they didn't grow up.

A. Yes.

Q. I'm being facetious, but you understand my point.

A. Yes. Yes. Yeah.

Q. When you said that you saw the airways, how did you visualize the airways?

A. There's a couple of indications we look for primarily. The chin to the chest contact, or the space between the chin and the chest.

Q. So this was just visual observation?

A. Visual observation.

Q. Did you do pulmonary function testing?

A. We did a pulse-ox, pulse-ox sensor. So monitoring the oxygen saturation.

Q. All right. And when you did your pulse-ox what were you finding?

A. We found on some infants, not on all infants, that extended sitting in the car seat with the head forward could show reductions in some oxygen saturation.

Q. You haven't seen any pulse-ox testing on infants in 30-degree inclined sleeping units, have you?

A. No.

Q. Have you analyzed the CAD drawings in this case?

A. No.

Q. Have you analyzed the geometry of the curved surface of the base of the Rock 'n Play?

A. Yes.

Q. And how have you analyzed that geometry?

A. I had the opportunity to analyze the unit in question in the case as well as the newer unit. And I took some dimensions and some pictures.

Q. Right. And the dimensions and so forth that you took essentially were the width of the unit; correct?

A. The angle, back angle of the unit. The width and the depth.

Q. We'll get into that.

A. Of the seated area, yeah.

Q. All right. What was the -- I couldn't read your pictures very well. With respect to the angle --
A. I found the seat, the back angle of the seat I found to be at 32 degrees.
Q. Of which one?
A. Both units.
Q. Of both units to be at 32 degrees. Let me just ask it. We'll come back to this.
I won't get into it now, I'll come back to that.
Do you have an understanding of the test protocol to measure infant incline sleeping products? Measure the angle.
A. To measure the back angle.
Q. The back angle of incline sleep products.
A. No.
Q. Have you ever read the standard for that?
A. For the incline sleeper standard?
Q. For the infant sleep product standard in measuring the angle of incline; have you read the standard for that?
A. Oh, yes, I've read the standard, yes.
Q. And where did you find that standard?
A. I downloaded it.
Q. Pardon me?
A. I downloaded that standard.

Q. And is that the 3118 standard?
A. I don't recall the numbers. 3118.
Q. Right. And it does have a standard for measuring incline; correct?
A. Yeah.
Q. And a protocol?
A. Yes, it does. Yes, I believe that's right, yeah. Yes. Yes, it does.
Q. And it calls for the use of a hinged weight gauge, does it not?
A. Uh-huh.
Q. And you did not measure this with the use of a hinged weight gauge; correct?
A. No, I did not measure it that way.
Q. Right. And you did not use a digital protractor that's called for in that standard, did you?
A. No, I did not use the -- no. But I -- sorry. I didn't have the, the weight to put in there, but I did use a simulated child.
Q. Right. Do we know the weight on that simulated child?
A. 22 pounds.
Q. 22 pounds?
A. Yes.
Q. Do you know what the standard for -- do you know

what the weight of that weight gauge is?

A. Shouldn't it be the 17.5?

Q. Huh?

A. I believe it's the 17.5 CAMI. 17.5-pound CAMI.

Q. It's the mid weight CAMI; right? Newborn CAMI is 7.5 pounds; correct?

A. Yes, it is. Yeah.

Q. And the weight --

A. Yes.

Q. -- of the hinged gauge is approximately 7.5 pounds; is it not?

A. Yes.

Q. So the fact that you were using a 22 -- what was the length of that infant?

A. It's a simulated one year old, so I believe it's 19 inches if you were to stretch the legs out. But the legs are, the legs are permanently bent in, so.

Q. That did not attempt to mimic the FMVSS 213 CAMI newborn; correct?

A. No.

Q. Do you know the circumference of the head of the infant you used?

A. Not offhand.

Q. But it was how much -- he weighed how much?

A. I believe it to be close to 22 pounds. It's a

sandbag.

Q. The test protocol for the newborn sleep product in 3118 calls for a weight of 7.5 pounds approximately; correct?

A. Yes. I believe it calls out both, the newborn and the one year old.

Q. Yes.

A. Right. Yeah. Right here. Newborn and infant. So the infant would be 17.5.

Q. I'm sorry.

A. (Indicating) 17.5 is the infant dummy, the infant CAMI. And the newborn CAMI is 7.5.

Q. The newborn hinge weight gauge is 7.5 pounds; correct?

A. Yeah.

Q. And the newborn CAMI dummy is 7.5 pounds; correct?

A. Yes.

Q. The dummy you tested was 22 pounds?

A. Yeah.

Q. Asher Goodrich at the time of this event was approximately 9.9 pounds; correct? Do you know?

A. I believe so. I believe so.

Q. Do you have an understanding of what the geometry of the plastic insert does with respect to restraining

the infant in place when measured in accordance with F3118-15?

A. Do I understand how the plastic insert controls the child -- positions the child?

Q. Right.

A. Yes.

Q. And what is that understanding?

A. The child is seated at approximately 30 degrees.

Q. Right.

A. Yeah.

Q. And how about the, the curvature of the plastic, I'll call it plastic insert.

A. Yeah.

Q. The curvature of the plastic insert is designed specifically to do what?

A. Which curvature are we discussing? There are several curvatures in that plastic piece.

Q. The curvature of the base vis-a-vis the width.

A. The base to the width. The lateral curvature shoulder to shoulder.

Q. Right.

A. Yeah. In the product in question, yes, that looked quite sharp. It looked very high, and it looked to try to control the child laterally, yes.

Q. Right. To prevent rolling to one side or the

other; correct?
A. I didn't design it.
Q. Well, that specifically is stated in 3118; is it not?
If you look at the last page, Roman Numeral XI.VI, I believe. Look on the last page, Roman Numeral XI.VI. I don't have it right in front of me, but it refers to the test described on 7.9.
A. This says the 30 degree limit is intended to prevent infants from rolling sideways and slumping forward.
Q. Correct. That's the reason that it's shaped the way it is?
A. Okay.
Q. And isn't that the very reason expressed in the 2011 AAP guideline?
A. I'm sorry. Can you...
Q. Yes. Isn't that the very concern that's expressed in, --
A. In here.
Q. -- in the 2011?
A. That the child's head would roll forward, yes.
Q. Right.
A. Slump forward.
Q. And this product is designed to prevent that from

happening; correct?
A. I don't know if it was.
MR. MOORE: Yeah, let me object to the form.
A. Yeah. I didn't design the product so I can't speculate whether it was designed in order to do that.
Q. Well -- right. The ASTM standard certainly purports to do that based on your reading of Roman Numeral XI.VI; correct?
A. Supposedly, yeah. This is saying that. (Witness reviewing.) Yes.
Q. Okay. Read that so the court reporter can take that down. Just read that into the record, if you would.
A. So XI.VI says, "that the pivot angle was based on product comparison and anecdotal analysis of field reports. The 30-degree limit is intended to prevent infants from rolling sideways and slumping forward."
Q. Yes. We'll take a break.
(Lunch break taken.)
Q. Mr. Gaudreau, we've been off the record for a moment having a bite to eat and we're back on the record.
And I want to pick up now with your expert report that we have marked as an exhibit in this case and let me hand you a copy of --

A. I've got a copy here of the report.
Q. -- Exhibit 2, Exhibit 3, and Exhibit 4.
A. (Witness reviewing.)
Q. With respect to Exhibit 2, that is a report that was prepared by you and produced on or about September 29, 2017; correct?
A. Yes.
Q. And that is the report that you said you prepared having put approximately four hours in on the case for the preparation of that report; is that correct?
A. Yes.
Q. All right. I have compared that report to Exhibit 3, which is the, your report of exhibit, which is your report of November 15, 2017; --
A. Uh-huh.
Q. -- correct?
A. Yes.
Q. And what I see is that essentially the report, through your listing of data to be considered, is essentially the same, but you have added in Exhibit 3 your final report, or your supplemental report, federal standards as item 1D. Excuse me. 2D.
A. Yes.
Q. Why did you add federal standards?
A. I realized that I had missed it on the first

time.

Q. And what federal standards do you have reference to?

A. This here is talking about the protocol in designing a product in general.

Q. Are you aware of any federal standards governing incline sleep products?

A. No, I'm not aware.

Q. Are you aware of any federal standards governing cribs and bassinets?

A. No.

Q. Do you consider CPSC regulations and standards federal standards?

A. I guess I didn't consider them as a federal standard, no.

Q. So let me ask the question differently.

Are you aware of any CPSC standards for cribs and bassinets?

A. No, I'm not aware of them. I'm sure something exists, but.

Q. All right.

A. No. No.

Q. Is there a difference in your mind's eye between a CPSC mandatory rule on the one hand and a federal regulation on the other?

A. Other than the obvious difference that they're written by different bodies, or the stringency of the regulation.

Q. Both the CPSC mandatory rule and a federal regulation have to go through rulemaking in congress; correct?

A. Yes.

Q. All right. And they both have to be -- they are both subject to public comment; correct?

A. Yes.

Q. With respect to incline sleep products, are you aware of any CPSC rule or regulation with respect to incline sleep products?

A. No.

Q. All right. Are you aware of any notice of proposed rulemaking for incline, infant incline sleep products?

A. No.

Q. You would describe an ASTM standard as a voluntary standard, would you not?

A. Yes.

Q. You would consider a CPSC rule or regulation a mandatory rule; correct?

A. Yes.

Q. In other words, a CPSC standard has force of

law --
A. Yes.
Q. -- that must be complied with?
A. Yes.
Q. A CPSC standard is a voluntary standard as contrasted with -- let me start over again.
An ASTM standard is a voluntary standard as contrasted with the CPSC rule or regulation which is a mandatory standard that must be complied with?
A. Yes.
Q. In fact, the 2011 AAP guidelines state that cribs, bassinets and play yards that comply with ASTM and CPSC rules and regulations are acceptable to the AAP?
MR. MOORE: Object to the form.
A. You're saying that it says in here (indicating) that as long as it meets CPSC and ASTM that it's safe?
Q. Right.
A. I don't know if I read that exactly.
Q. Let me borrow Exhibit 5 for just a moment. Under Section 2A it says, "a crib, bassinet, or portable crib/play yard that conforms to the safety standards of the Consumer Product Standard Safety Commission and ASTM International (formerly the American Society for Testing and Materials) is recommended."

A. Okay. Yes.
Q. You would agree with that?
A. Yes.
Q. And if you had a Rock 'n Play incline sleep product that satisfied ASTM requirements, that would be recommended?
A. No.
Q. No. Why do you say that?
A. This does not say incline sleep products.
Q. I understand that. That says cribs and bassinets. I'm asking if there were an ASTM standard for incline sleep products, --
A. Yes.
Q. -- that would indicate that at least ASTM has felt that incline sleep products are safe for the -- their complying with those standards are safe?
A. The ASTM. Not the AAP.
Q. Correct. The ASTM.
A. Yes.
Q. Correct?
A. If ASTM creates a regulation for an incline sleep product category then naturally ASTM would feel like those products are safe; that's what you're asking me?
Q. Yes. Would you agree with that?
A. Yes.

Q. And if the CPSC has passed a crib and bassinet standard, it would be your understanding that the CPSC would consider a crib or bassinet that meets that standard as being safe?
A. Yes.
Q. And that's the guideline that you as a designer of car seats, for example, use as your goal, and that is to create and design a product that satisfies federal rules and regulations?
A. That's one of the goals.
Q. Right.
A. Yes.
Q. One of the goals. And when you do that, and when you satisfy those goals, you as a designer feel that that product that meets those goals is safe?
A. Yes. That's part of the process, yes.
Q. And you can certainly exceed the standard if you wanted to, but --
A. Yes.
Q. -- the idea is that if you meet the base requirements of either ASTM or CPSC you as a design engineer would consider that product to be safe?
A. When I design my products I design beyond these standards and then I feel like it's safe. I don't -- I don't stop at the regulation and feel like that is

enough.

Q. Understood. You can always over design, but as you've just testified to, at least the rulemaking authorities, i.e. the ASTM or CPSC in the promulgation of their rules and regulations, feel as if there is a product that conforms to those standards and those standards -- excuse me -- then that product is safe?

A. Yes.

Q. All right. And so that if you go about designing a product, you, Paul Gaudreau, may say, "well, this is a minimum standard here, I want to at least meet that standard;" correct?

A. Uh-huh.

Q. Say yes or no, --

A. Yes.

Q. -- otherwise she has a hard time.

A. Yes.

Q. "Uh-huh" can sometimes be yeses and sometimes they can be no.

A. Yeah.

Q. Let's go back for a moment to both Exhibit 2 and Exhibit 3. You introduced both of those reports with, "proper protocol should always, shall always include a lengthy research phase"?

A. Uh-huh.

Q. Define "lengthy."
A. Sufficient for the product being designed.
Q. In a word, if you can design a "safe product" in a month, you don't necessarily have to design it in 10 years?
A. It depends on the product.
Q. Sure.
A. Yes.
Q. But when you use the term "lengthy" it's not necessarily a temporal measurement, but rather a -- how should we -- appropriately researched period of time?
A. Yeah.
Q. And then you list under 1, Market/Consumer Need. That's a basic marketing concept, you've got to be sure that there's a need for the product otherwise --
A. Right.
Q. -- you could devise the perfect product that nobody will buy.
A. Yes.
Q. And we will all be out of a job at that point.
A. Right.
Q. And then of course we've just discussed "pertinent regulations/recommendations from:" ASTM.
A. Uh-huh.
Q. CPSC.

A. Uh-huh.
Q. AAP.
A. Uh-huh.
Q. And federal standards.
A. Yes.
Q. So we've discussed all of that?
A. Yes.
Q. And as we sit here today are you aware of the ASTM standards to which the Rock 'n Play complies?
A. We're referring to the inclined sleeper standard?
Q. Yes.
A. Yes.
Q. And what are those standards?
A. This one here (indicating.) F3118-15.
Q. All right. Do you know if there's been one issued subsequent to 2015?
A. I can't recall exactly. I feel like I saw one earlier than that. But this one I know.
Q. With respect to ASTM standards, the number following the dash and the standard number reflects the year of the issuance of that standard; correct?
A. Right.
Q. Item 3, you threw me on this one.
A. Yeah.
Q. "Alpha/Beta testing with prototypes." In other

words, you start with an initial design and you then, that would be the alpha design, and then you go to a secondary or a subsequent design and that would be beta with a --

A. Yes.

Q. So, in other words, you go through a temporal or line of prototypes, if you will -- -

A. Yes.

Q. -- to --

A. Iterative.

Q. -- ultimately develop the product that you want?

A. Yes.

Q. And do you know if the Rock 'n Play went through alpha/beta testing?

A. Do I know that?

Q. Yes.

A. No, I do not.

Q. You are not criticizing, are you, the lack of alpha/beta testing in the development of the Rock 'n Play?

A. I don't know if there was any, so.

Q. If there were some you would then remove alpha/beta testing as an area of critique of the product; correct?

A. I feel like -- I feel like if physical testing

was done, if a child is put into a prototype of this product for some period of time, I believe the head dipping or the head movement may have been seen through alpha and beta testing.

Q. Sure. And it may not have been seen; correct?

A. Potentially.

Q. Right. But you don't know one way or the other?

A. No.

Q. So the alpha/beta testing with prototypes is to accomplish the following; A, "to understand actual product usage"?

A. How the consumer will use the product.

Q. Right. And that's a fairly broad statement, but with respect to the Rock 'n Play sleeper that would be with respect to the fact that it is used as a sleeper?

A. That could be how the parent puts the child in, how they take them out, how they secure the child.

Q. Right.

A. These types of things.

Q. "To assess pitfalls and misuse"?

A. Uh-huh.

Q. In other words, you observe users in a test lab or otherwise?

A. Yes.

Q. Using the product without instruction and see

whether they use it or misuse it or whatever it might be?

A. Yes.

Q. And then "to correct deficiencies." In other words, deficiencies in the product itself or deficiencies in instructions, or?

A. Deficiencies in manual warnings, usage, design itself.

Q. Have you reviewed, and I did not see it in any of your reliance materials that you've identified that supports your material; have you reviewed the instruction material that came with the Rock 'n Play?

A. Yes.

Q. You have no opinion one way or the other on the instruction material?

A. The instruction material calls out the product as a sleeping product. And that's my -- that's where I disagree. I don't believe the product is designed appropriately for sleeping.

Q. And the reason you say that is because of your fear of compressional asphyxia; correct?

A. Due to the angle.

Q. Due to the angle?

A. The back angle.

Q. And anywhere in the AAP sleep guidelines when

they discuss compressional asphyxia do they -- excuse me.

When they discuss asphyxia do they ever talk about compressional asphyxia?

A. I would have to read through this to see if the word "compressional asphyxia" is used.

Q. Would you draw a distinction between positional and compressional asphyxia?

A. I think positional asphyxia would cover compressional asphyxia.

Q. And you will agree with me, will you not, that the only statement in the AAP about elevated sleeping is what you read earlier today followed by Footnote 11, which says, "elevating the head of the infant's crib while the infant is supine is not recommended." Cite to Footnote 11.

A. Uh-huh.

Q. Correct?

A. Uh-huh.

Q. The Rock 'n Play sleeper is not a crib, is it?

A. No, it's not.

Q. So by definition the critique they had of a crib doesn't apply to the Rock 'n Play sleeper?

A. I don't know if the Rock 'n Play sleeper was in mind when this publication was written, and if we read

the entire publication it discusses sleeping flat.

Q. It goes on to say, "it" meaning inclined sleeping, is ineffected -- excuse me -- "is ineffective in reducing gastroesophageal reflux; in addition, it might result in the infant sliding to the foot of the crib into a position that might compromise respiration."

A. Uh-huh. Yes.

Q. With respect to the Rock 'n Play sleeper it is specifically designed with a seat in it that will prevent precisely what the 2011 sleep guidelines are concerned about, which is sliding to the foot of the crib into a position that might compromise respiration.

A. I don't know if that, if the Rock 'n Play sleeper is designed effectively to do that.

Q. You haven't done any testing to make that determination, have you?

A. No.

Q. You have not done any testing to determine whether or not inclined sleeping at 30 degrees reduces oxygen saturation?

A. Specifically at 30 degrees?

Q. Correct.

A. No.

Q. There is no statement that elevating the crib to 30 degrees might result in head-to-chest compression, is

there?

A. No.

Q. The only concern expressed is that the infant might slide to the foot of the crib into a position that might compromise respiration; that is their concern?

A. In that specific section.

Q. Are you aware of the history of the development of ASTM F3118-15?

A. As I'm aware, I believe this ASTM recommendation was written to cover products like the incline sleeper because they did not comply to the bassinet regulation. But -- sorry. Recommendation.

Q. I'm sorry. My hearing over the years is diminishing ever so slightly. Can you repeat that?

A. My -- I'm sorry. My thought is that this recommendation on incline sleepers was developed in order to cover these products, incline sleeping products, that did not comply to bassinet recommendations.

My recollection is that this regulation -- this recommendation was not written until after the Rock 'n Play existed.

Q. Right. Do you know when the first Rock 'n Play was sold?

A. No, I don't.

Q. Do you know -- take the word "sold" out because that's -- who knows.

Do you know when it was first produced for the marketplace?

A. No, I don't know the exact date.

Q. Do you know what year?

A. No.

Q. We do know that it was tested by SGS, by the Bureau of Veritas, and others prior to production in 2009; correct?

A. Right. That we know.

Q. And it was tested to the crib and bassinet standard; --

A. Yes.

Q. -- correct?

And it was tested to F2194-07; correct?

A. Yes.

Q. And it was found to be compliant with that standard; correct?

A. At that time.

Q. At that time. And then the F2194-07, which I do not believe you have ever seen; correct?

A. Yes.

Q. Was modified to some extent. You don't know how much, but was modified in 2010?

A. Yes.
Q. And the product then, the, the product then complied with the 2010 standard, do you know anything about any subsequent standards from F2194-10?
A. No.
Q. Do you have any understanding of what was going on between the CPSC on the one hand and ASTM on the other with respect to development of standards for incline sleep products?
A. No.
Q. You understand, do you not, that the Rock 'n Play sleeper does in fact comply with F3118-15?
A. Yes.
Q. And that is the standard that we have said is specific to incline sleep products?
A. Yes.
Q. In Exhibit 2 and 3, you have the statement, "after reviewing the case documents, and the sleeper in question, it appears that Fisher-Price did not follow the above protocol."
What did Fisher-Price not follow?
A. It is my opinion that they did not follow the academy -- American Academy of Pediatrics guidelines.
Q. Do you know if the American Academy of Pediatric guidelines were in force and effect with respect to any

statement on incline sleeping at the time this product was developed in 2008, '09, '10? Strike that.

A. Yeah. I believe some of these, some of these publications in the pediatric journal were prior to that date.

Q. I understand that some of them were prior to that date.

A. Yeah.

Q. But my question is did they violate any AAP sleep guidelines at the time the product was developed in 2008, 2009?

A. I believe so.

Q. And so tell me precisely what it is that it was that they violated?

A. When I read, at least, when I read those studies all of them point to the fact of children to sleep flat, not to sleep inclined. It's not very specific as to what angle is appropriate. But all of those documents, if you read them, they all refer to sleeping flat. So it's my understanding that the AAP recommends flat sleeping.

Q. I asked you this before, and I'm not going to go through the same series of questions, but just generally speaking you are unaware of any statement in any world literature anywhere that says that sleeping at an angle

of 30 degrees in and of itself induces, excuse me, increases the risk of either SIDS, ALTE, BRUE, or any airway compromise?

A. Not specifically 30 degrees, no. No.

Q. Is the only recommendation in all the materials that you have ever seen with respect to the term "incline sleeping," the one reference we have just discussed in Section 1A of the 2011 sleep guidelines?

A. Incline?

Q. Incline sleeping.

A. Very specific.

Q. I'm contrasting that with car seats. I'm talking about incline sleeping products.

A. A couple of those papers do talk about allowing children to sleep in car seats which are inclined, and that is not recommended.

Q. Right. Because of the risk of?

A. Positional asphyxia.

Q. Right. And you've got all sorts of straps and so forth in a car seat that you do not have in a Rock 'n Play sleeper; correct?

A. You have a five-point harness which should control the position of the child greater than the incline sleeper in question. The incline sleeper in question only controls in three points.

Q. But it doesn't touch the head.
A. That's part of the problem, it doesn't address the position of the shoulders and the head, allowing the child to move quite freely at the waist.
Q. I'm talking about car seats.
A. Car seats have a five-point harness.
Q. A five-point harness. But an infant lying at 30 degrees -- I'm saying infant. We have to be specific here. But we're talking about somebody and we'll, because Asher was seven weeks of age at the time of this event, we'll just use two months as a cutoff point.
A. Sure.
Q. But term infants two months or less do not pick up their heads; correct?
A. Correct.
Q. Infants, and Mrs. Goodrich attested to this, at two months of age or less don't roll over; correct?
A. Correct.
Q. Infants at two months or less are like a lump of coal in that you put them down they will stay put for an indefinite period of time without rolling over or lifting their head?
MR. MOORE: I'll object to the form.
Q. Based on your observations.
A. Based on my observation I feel like they're more

like a rag doll than a lump of coal. A lump of coal is quite stiff, a rag doll is quite flexible. So gravity has an effect on a rag doll which doesn't have the same effect on a lump of coal.

Q. And gravity certainly plays a role with respect to the position of an infant's head; correct?

A. Yes.

Q. Right. And have you done any gravity studies to determine the vertical moment on the head of an infant at a 30-degree or 60-degree angle?

A. No.

Q. But we do know that the laws of inertia apply equally to a baby's head, and that is that there's a tendency of a body at rest to stay at rest and a body in motion to stay in motion; correct?

A. Yes.

Q. And one of the factors affecting inertia is gravity?

A. Uh-huh.

Q. Coefficient of friction?

A. Yes.

Q. Anything else?

A. No.

Q. All right. So with respect to the sentence that I read earlier about after reviewing the case documents

and the sleeper in question it appears that Fisher-Price did not follow the above protocol; your answer was, "because we did not follow the recommendation of the AAP."

A. Yeah. That wasn't my full answer. But that was part of the answer.

Q. And so if we boil to the essence your criticism with respect to incline sleep products at 30 degrees, the only statement that you are aware of in any of the AAP documents that you have read is the statement that refers to sliding to the foot of a crib contained in Section 1A of the 2011 guidelines?

A. I mean, I'm -- I'm reading all of them. And if you read all of them it talks about flat sleeping and not to do incline sleeping. If I need to pull a very specific segment out then I will need some time to read through those again. But in a whole they talk about flat sleeping.

Q. And that's your reading of what those documents say?

A. Yes.

Q. And that is your critique found in item 1 below. Which is "infants are not recommended to sleep inclined due to the risk of positional asphyxia;" correct?

A. Yes.

Q. "(See AAP recommendations issued prior to the development of this product)"
A. Uh-huh.
Q. The SIDS subcommittee that wrote these standards, --
A. Yes.
Q. -- that is really the centerpiece of what you're talking about; correct?
A. Uh-huh.
Q. The SIDS people had not ever critiqued inclined sleeping in any prior policy statement; correct?
A. Yes.
Q. So the first critique of inclined sleeping in a crib is articulated in 2011 after this product was developed?
A. In this document, yes. But there are other, other publications that were published and peer reviewed that do talk about the dangers of inclined sleeping.
Q. But as we sit here today without your going through and trying to find a sentence, you're unaware of any sentence in any of these other publications that addresses inclined sleeping separate and apart from car seats?
A. At this moment, yes.
Q. Then you say, "instead of developing the product

to the current regulation" -- excuse me. Let me start that over again. Strike that.

"Instead of developing the product to the current regulation/recommendations, Fisher-Price petitioned a change in regulation/recommendation to suit the inclined sleeper in question."

Now, let's break that into a couple of parts.

The first clause reads, "instead of developing the product to the current regulations/recommendations."

A. Uh-huh.

Q. You will agree with me that this product was tested to and was found to comply with the crib, bassinet standard F2194-07 at the time it was developed?

A. Yes, at the time it was developed.

Q. So that statement in your report is wrong because at the time of developing the product it was developed to current regulations and recommendations?

A. Yeah. Yes, that's true.

Q. And then "Fisher-Price petitioned a change in regulations/recommendations to suit the inclined sleeper in question."

What do you mean by that?

A. I believe there's some e-mail and documentation here that shows that Fisher-Price wrote these regulations, or participated in writing these

regulations. As we can see here in 38. F3118-15. On the bottom here. Right (indicating.)

Q. Do you know what that license is for?

A. I'm sorry.

Q. To be able to -- to be able to print an ASTM.

A. Yes, I know. But there are, I thought I read some e-mails here that talk about one individual at Fisher-Price who helped write that regulation; correct?

Q. ASTM wrote the regulation; correct?

A. Right. But Fisher-Price is on the committee that wrote the regulation.

Q. Do you know that?

A. I thought I read that, yes.

Q. Where did you read that?

A. Here somewhere.

Q. I'm not necessarily disagreeing with you, I want you to tell me where you saw it.

A. No, I'm fairly certain I read it somewhere in here along the lines that there was some e-mails back and forth about trying to get the regulation switched; right? Yeah. There was quite a lengthy e-mail process that I read, or e-mail string.

Q. So let's parse the word "partition" versus "comments."

A. Okay.

Q. Have you ever participated in the rulemaking of CPSC regulations?
A. No.
Q. All right. Have you ever made comments when the public is invited to make comments with respect to proposed federal rules or regulations, whether or not they were CPSC rules or regulations?
A. No.
Q. No. Are you aware that the public is in fact invited --
A. Yes.
Q. -- to make comments about proposed rules and regulations, whether issued by the federal -- whether it's an FMVSS standard or whether it's a CPSC standard, whatever it might be?
A. Yes, I'm familiar with the process.
Q. You're familiar with the rulemaking process?
A. Yes.
Q. And there's nothing wrong with a manufacturer, a consumer, or anyone writing the regulatory agency expressing their opinion about a proposed rule?
A. No, there's nothing wrong with that.
Q. That's the comment period; correct?
A. Yes.
Q. That's not a petition, it's just a comment.

A. Yes, a comment period.
Q. So would it be fair to say -- well, so, tell me what it is that you've seen that you say turns this into a petition as opposed to a comment?
A. I should say "comment."
Q. I'm sorry?
A. I should refer to it as a comment.
Q. You should have referred to it as a comment?
A. Yes.
Q. Because that's exactly what Kitty Pilarz did, did she not?
A. Yes.
Q. She wrote a document in July of 2010 to the CPSC entitled Comments on Proposed Rule?
A. Yes.
Q. It's not a petition, it was just, they were comments?
A. Comments, yes.
Q. And the comments was a concern that as constituted in 2010 the proposed rule did not include incline sleep products; correct?
A. Yeah. I believe when I read through that she discussed that the new proposed rule would make it, the incline sleeper in question, unsalable; right? And she made comments on ways that this rule could be modified

in order to include the Rock 'n Play.
Q. Well, she will be deposed and the statement speaks for itself. You've -- you have not read her testimony, have you?
A. No, I have not.
Q. That would be instructive to you, would it not?
A. To read her testimony?
Q. Yeah.
A. Yeah.
Q. And have you read closely her letter?
A. Yes, I have it here. I did read her letter to the CPSC.
Q. Right. If you look at Bates label page 1044. The document certainly speaks for itself; is that fair?
A. Yes.
Q. Whatever it says it says. You've got no insight and did not participate in the drafting of that letter; correct?
A. No, I did not.
Q. There's a letter dated July 12, 2010?
MR. MOORE: You said 1044?
MR. HINES: 1044.
MR. MOORE: 1044. Here it is.
A. (Witness reviewing.)
Q. We'll let that letter speak for itself. You

can't add anything to what the letter already says; correct?

A. No.

MR. MOORE: And in the sense -- object to the form. I don't know what he means, "add to it."

A. Yeah, what do you mean by "add"?

MR. MOORE: I don't know what it means.

Q. Do you know why inclined sleep products were being carved out from the crib, bassinet standard?

A. For the risk of positional asphyxia.

Q. Pardon me?

A. The risk of positional asphyxia.

Q. Where do you get that statement from?

A. Because of all the AAP recommendations for flat sleeping.

Q. Do you know who it was that was behind carving the inclined sleep products out from the crib, bassinet standard?

A. No, I do not.

Q. And you don't know who, what entity was behind carving it out or why it was being carved out?

A. No.

Q. All right. So when I asked you a moment ago and you said, "well, it was carving it out because it was contrary to the AAP sleep guidelines," that's just your

speculation?
A. That's -- yeah.
Q. All right. Now, in item 3 you say, "alpha/beta testing would have shown a risk of positional asphyxia."
A. I believe so.
Q. What test protocol could be created to demonstrate a risk of positional asphyxia?
A. Using live children in the prototypes. Positioning live children in prototypes.
Q. All right. And just observing?
A. Observing. Also measuring oxygen saturation.
Q. You don't know whether or not such studies were undertaken, that is observing infants in Rock 'n Plays?
A. Correct.
Q. Shouldn't the sentence have read, "alpha/beta testing may have shown a risk of positional asphyxia"?
A. I believe it would have.
Q. And what is your basis for saying that inclined sleeping at an elevation of 30 degrees would have revealed a risk of positional asphyxia?
A. I believe we -- it would have been able to observe for -- Fisher-Price would have been able to observe the chin to the chest contact.
They would have been able to observe that the airway was not in line with the, with the spine.

And they may have been able to observe oxygen saturation.

Q. But you've never seen positional asphyxiate testing done on newborns at angles of 30 degrees; have you?

A. I can't say for sure angles at 30 degrees, no.

Q. You have never tested infants sleeping at 30 degrees inclined from the horizontal, have you?

A. No.

Q. So you're simply speculating that alpha/beta testing would have shown a risk of positional asphyxia because you haven't tested for that?

A. I haven't specifically tested 30 degrees, but I've tested inclined sleeping.

Q. At degrees at 45 degrees or greater; correct?

A. 45 degrees or less. Not greater.

Q. Well, it depends on which way you measure.

A. From horizontal up to 45 degrees.

Q. Up to 45 degrees. And you've also in your -- in most of the car seat studies I've seen they consider this to be the vertical at 90 degrees and they measure from the vertical down from 90, 80, 70, 60, 45; correct?

A. Some, yes. The studies I've done were up to 45 degrees from horizontal plane.

Q. But you have never participated in any studies or

testing of studies from zero elevation of the horizontal up to 45 degrees?

A. Yes, I have.

MR. MOORE: I object to the term "studies."

Q. Okay. Tell me what studies.

A. Are we -- these are my own research that I've done in the hospital as I spoke before with Joe O'Neil and Marilyn Bull. So they're not published studies.

Q. And so what did you observe?

A. We observed at incline, leaving the infants in an inclined position, we did observe positional asphyxia in the terms of the chin close to the chest or the oxygen saturation dipping.

Q. Is that documented anywhere?

A. It's documented with the company that I worked for when I did this. It's not published research.

Q. How did you measure chin to chest in an infant?

A. With a tape measure.

Q. And tell me about that.

A. So we laid the child down flat, positioned the head so the airway is in line with the spine and take a measurement.

Q. All right.

A. Then lay the child on a flat table, take a measurement. And put the child in a car seat and take a

measurement.

Q. All right. And that's a car seat at 45 degrees?

A. Up to 45 degrees.

Q. Did you ever test a car seat at less than 45 degrees and if so which car seat?

A. We tested several models of car seats. Some have 45 degrees, some up to 45 degrees. I'm -- I can't recall the exact angles of those car seats in question.

Q. And do you know of any detriment in oxygen saturation levels?

A. We did notice decreased oxygen saturation.

Q. Below the range of normal?

A. We did not keep the children in there for very long periods. So, no, not below the range of normal.

Q. If I were to go search for that documentation tell me when that was done. When that testing was done.

A. I don't know how you would search it. But it was done in 2013.

Q. All right. And for whom were you working at the time?

A. Kolcraft. K-O-L-C-R-A-F-T.

Q. And where was the testing done?

A. Children's Hospital in Indianapolis.

Q. Children's in Indianapolis?

A. Yes. But again, this was not published research,

this was....

Q. How long did it take?

A. We made two visits to the hospital with some prototypes and some competitive product, we were there maybe for a couple of hours each time. I think there was a couple of children put in the seats each time.

Q. Were the infants asleep or awake?

A. Awake.

Q. Tell me physiologically how an airway is obstructed in an infant lying at an angle of 30 degrees?

A. I can specifically say -- I can't specifically say for 30 degrees. I can say when the child's inclined.

Q. Let's say 30 degrees or less.

A. If the chin is touching the chest then the airway could be pinched or compromised.

Q. How is the airway going to be pinched or compromised in the human anatomy of a normal infant eight weeks of age or less?

A. The --

MR. MOORE: Let me object. Object to the form.

You can answer that.

A. I'm not a physician.

Q. So you don't know the answer to that?

A. I can tell you what it was, how it was explained to me by a physician.
Q. But you don't, of your own knowledge, have any understanding of how the human trachea of an eight-month or eight-week old child lying supine, flat on back at an angle, is going to cause chin-to-chest compressions such that there will be airway obstruction?
A. I guess I'm not understanding the full question.
Q. I'm just asking you to explain how it happens.
A. Sure. Okay. It's like a straw. As it was explained to me the trachea is about the size of a drinking straw. But quite flexible. And so by the head falling forward and landing the chin onto the chest, he will bend that straw over. And if you were to bend a drinking straw you would notice that the flow of water coming through that drinking straw would become compromised.
Q. But that's not the human anatomy, is it?
A. But that's how it was explained to me.
Q. Right. The trachea is not like a drinking straw, is it?
MR. MOORE: Let me object to the form.
Q. Would you agree?
A. The trachea --
Q. Is not like a drinking straw. The trachea has

what wrapped around it?

A. It's got tissue wrapped around it; right?

Q. It's got cartilage wrapped around it.

A. Cartilage, right. But in an infant it's not as mature or it's not as stiff.

Q. That's what I was going to ask you. That's why I asked you earlier about maturation of infant airways, and you said you have no idea, you've never done a study.

A. Okay. I don't know what the maturation rate is.

Q. Right. So other than some explanation given to you by a doctor who I've got no idea whose credentials is what, that the human trachea is like a drinking straw and can be crimped. You know --

A. The doctor is Marilyn Bull who is actually a coauthor on several of those papers.

Q. They can be crimped. You can go into the hospital with a straw that it's got the little bend in it and you can bend it and it doesn't crimp and you can suck water or fluids right up through the straw; correct?

A. Yeah. On a flexible straw, yes.

Q. Sure. That's one of the reasons that human beings have developed the way we have through generations and generations; correct?

A. Uh-huh.
Q. All right. So do you agree with me that the sentence should more properly read, "alpha/beta testing may have shown a risk of positional asphyxia" since you've never tested this and know of no testing that would reflect that at 30 degrees or less compressional asphyxia increases the risk of SIDS, BRUE, ALTE, or airway compromise?
A. I guess it's my opinion that it, it would have shown that.
Q. But based on --
A. The head placement.
Q. But based on no testing to show that?
A. Not specifically at 30 degrees.
Q. Right. All right. "Furthermore, it appears that Fisher-Price knew of the potential positional asphyxia problem."
What is that based on?
A. Well, if you look at the old product versus the new product you'll see some very definitive differences. So it looks like they were correcting an issue.
Q. That's the reason I want to ask. And I asked you earlier and you said you had not done any of the CAD measurements. And you were unsure of, at least, correct me if I'm wrong, but you never did any examination of

geometry of shape of what I'll call the old versus new plastic insert?

A. Sure. That can be seen in the photos that I sent.

Q. Your photographs show measurements up at the top --

A. Yeah.

Q. -- with width.

A. So you can see --

Q. And we'll come to those in just a minute. And in fact now is the time to do it. I've got time, you've got time. Would that be the best way to explain this?

A. Sure.

Q. All right. I just -- before we get into the measurements, I am somewhat concerned with the statement, "furthermore, it appears that Fisher-Price knew of the positional asphyxia problem and attempted to address this issue with the change in shape of the hard seat."

Are you suggesting that Fisher-Price was unaware of positional asphyxia issues in its generations of manufacturing infant products?

A. Potentially with this product.

Q. You don't -- you don't know, though, do you?

A. No.

Q. All right. Now, so you say that the photographs that you took of the measurements that we have, and that's in Exhibit 4, demonstrate a change in the shape of the hard seat?

A. Yes.

Q. All right. Now, before we get to that, the hard seat is shaped, is it not, it's curved?

A. Yes.

Q. And it's curved in a variety of angles, --

A. Yes.

Q. -- is it not?

And if you were looking -- if I were holding -- if my iPhone was, you were looking straight at the Rock 'n Play, it's got a bite angle where the infant's rump rests at the bottom with a curve that causes the thighs to rotate up; correct?

A. Yeah. Yes.

Q. We see that in -- look at your photograph that you -- we'll take baby Asher. You've got the picture of baby Asher.

MR. HINES: Let's mark that as Exhibit 6.

(Deposition Exhibit No. 6 marked for identification.)

Q. So we're now looking at Exhibit 6.

A. Uh-huh.

Q. And right where Asher's rump is resting down at the bottom there is a plastic lip that comes up; correct?
A. Yes.
Q. And it induces an angle like you see with the baby's feet up in the air; correct?
A. Yes.
Q. And then if we come up from that narrowest of positions in the Rock 'n Play, it's semicurved at the base; correct?
A. Yes.
Q. A slight curvature at the base. And it also -- this, right where the hips are located is the narrowest point in that shape and it then expands upward and outward in sort of a V shape; correct?
A. Yes.
Q. And that's so if the infant, not if, as the infant grows, that shape can essentially be maintained with shoulder-to-shoulder width increasing; correct?
A. Yes.
Q. All right. Now, let's look at the photographs which are in Exhibit 4. You have them?
A. Yes.
Q. Let's do this, and I hate to do this, but do you mind if I stand over your shoulder?

A. That's fine.
Q. Show me -- let's do this, having done this for a number of years, when you and I start talking as we go through photographs it becomes wholly unintelligible. Let's go through this first off the record and we'll come back through it, and I think in a few questions we can get it much more clearly stated, rather than my rambling for 20 pages; okay?
A. Okay.
(Discussion off the record.)
(Deposition Exhibit No. 4.1 to 4.8 marked for identification.)
Q. Mr. Gaudreau, we've been off the record and you've arranged the photographs in order to demonstrate what we were earlier discussing about how the shape of the seat has apparently changed. And if you could run through the photographs using the exhibit number by way of explanation so we will know which photograph you're talking about. And describe for us what you are showing by each of these photographs.
A. So look firstly at 4.1 and 4.2. And this is where I, I positioned the Rock 'n Play with this doll. Is it okay if I call it a doll?
Q. Sure.
A. The back angle is measured here at approximately

32 degrees on both the new and the old.

We move on to 4.0 and 4.3, this is where I started to notice differences in the design. Of course I removed the initial set of soft goods; maybe we can call them the comfort set of soft goods. And you notice the old one had a rigid piece of plastic that was enveloped in a fabric pocket. And the new one is similar but different hard piece of plastic, but is sewn directly to the soft goods.

Q. All right. And how were you able to measure the height from the bite angle at the bottom, what I will call the bottom of the plastic insert?

A. How was I able to measure that?

Q. Right. In other words, you are drawing comparable width measurements?

A. Yeah.

Q. How are you comparing?

A. I was approximately holding the tape at the neck of the child. Or the, the doll, the chin of the doll.

Q. All right. And then if we moved either one of the tapes up or down, you would get somewhat different measurements?

A. You could get a different measurement, yes. I did the old one first and I positioned the tape just above the chin. And you can see in the image the tape

sits well above the chin.

On the second image of the new one I had to position the tape slightly below the chin, otherwise, I could not get the tape to touch the side walls. Meaning that the depth of the new design is not as deep. It's shallower than the old design.

Q. Because -- all right. Because you're saying that the, whereas, on 4.0 the tape comes up essentially to where the doll's nose is?

A. Yes.

Q. On 4.3 the tape essentially got caught at or about the doll's neck or chin?

A. Yes.

MR. MOORE: Let me object when you say, "caught."

Q. Well, there was a -- I take it you were sliding the tape up until you came in contact with the --

A. I positioned the tape on the first one right about the chin, nose area to take that measurement.

When I went to position the tape on the new one I tried the same technique but the hard plastic was too shallow in order to take a measurement there. So I dropped the tape until I was able to touch the side walls of the plastic and not interfere with the face too much of the doll.

Q. Right.
A. So it caused the chin of the doll, as you can see in the image, to sort of bite over the tape measure.
Q. And again, I want to go back to my question. Were you using your best efforts to position the two dolls in their respective Rock 'n Plays --
A. Yes.
Q. -- at the same location?
A. Yeah. Without having the comfort soft goods on, the three-point harness shown in these photos, so I tried to position the dolls as best I could in the exact same position. You will notice some differences in the positioning of the dolls, the shoulders particularly and the arms. The old design was steep and very deep, and you'll see that the shoulders are rather squeezed in.
On the new design you can see where I kind of pushed the elbows out to try and demonstrate how much wider and how much shallower the angle of the side wall was.
Q. As between the two, based on your training, education, and experience, which is easier for the child if he were to rotate -- if he had the capacity to rotate?
A. Yes.
Q. To turn over, to rotate over, if you will?

A. Yeah. I believe that's shown in 4.7 and 4.8. If we look at those images I believe the hips in the three-point harness is what is going to control the child's movement more than the sidewalls. Because if you look at 4.7, 4.8, it's about the same.

Q. As between 4.0 and 4.3, --

A. Okay.

Q. -- all of the things being equal and no restraints in place, do you have an opinion as to which would be more difficult for an eight-week old infant to turn in?

A. I don't have an opinion on which one would be more difficult to turn in. An eight-week old infant are not turning themselves very well anyway.

Q. I was going to say, as we know from Asher in this instance, he was not able to turn over, so.

A. Right.

Q. What you're saying is both would equally hold an infant in place?

A. Yes.

Q. Restrain the infant in place?

A. Potentially.

Q. With 4.6 and 4.4, are we still on this?

A. We're zero and 3, that's fine.

Q. Are you done with 4.0 and 4.3?

A. Yeah.
Q. Okay.
A. If we look at .4 and .6.
Q. So we're looking at 4.4 and 4.6?
A. Yeah. And again this is trying to get a basic measurement of the width again, showing how it's changing, so 4.4 being the new seat at approximately 12 inches, and 4.6 being the old seat and approximately 10 inches. What I'm trying to show there is the rate in which the two different ones flare out.
Looking at .0 or .3 you'll see there's a difference of 1 inch in width near the neck, and .4 and .6 there's a difference of approximately 2 inches up above the head. So obviously the rate of angle change is significantly different.
Q. Okay. Did you notice in ASTM 3118-17 ways to measure the side-to-side restriction of the Rock 'n Play?
A. I can't recall.
Q. So here between 4.4 and 4.6 what you're saying is that there is approximately a 2-inch difference up above the head and the width?
A. Yes. Which to me shows that the rate at which the angle flares up and out is different.
Q. Right.

A. Before there was a 1-inch difference and now there's a 2-inch difference.
Q. Right. Next. Are you done with those?
A. Yeah.
Q. Okay.
A. This was something hard to take a photo of. If you look at 4.5 I tried to capture the depth. Of course trying to get the camera at exactly the right angle was tough.
So as I look at those in conjunction with 4.3 and 4.0; looking at 4.5 and those two, we're trying to depict the depth and the change in depth. Again, 4.0, the tape being above the, the chin and nose of the doll, 4.3 it's below, and then 4.5 is showing, trying to grab that dimension.
Q. Did you measure the depth of the subject Rock 'n Play --
A. The old one.
Q. -- the same way you did the old Rock 'n Play, and the same way you measured 4.5?
A. I believe I did. I don't think the photo was quite clear.
Q. Right. And I'm just looking at 4.1 and 2. You would agree with me, would you not, that distances and angles of elevation above and below that protractor can

affect visually appearance of background height?
A. Sure. You get a parallax effect with the camera.
Q. Right. So it's -- this is sort of Kentucky winded to some extent, but I can look at 4.2 and 4.1 and see they they're taken at slightly different degrees and distances and so forth. So all of that will have an effect on apparent depth between the top of the protractor on the one hand and the edge of the --
A. Right.
Q. -- plastic?
A. That's why at 4.5 was a quick grab at that dimension, and then I realized with the parallax effect I wasn't going to be able to get an accurate measurement with a camera. So 4.1 and 4.2 I'm only going to talk about the angle because that's clearly measurable.
So that's why with the other series, 4.0, 4.3, and then 4.4, 4.6, I'm measuring to that hard plastic edge. And the reason I took the measurement at different heights was to show the angle, the rate of angle change. I felt that was the only way to show it.
Q. Then we've got 4.7 and 4.8.
A. So 4.7, 4.8 I tried to anticipate potential, potential malpositioning of the, of the infant. And we know infants can't move too much at this age but they can squirm a little bit. And the thought here was,

well, if the child were to squirm around a little bit and position themselves somewhere like this where this three-point harness is not really controlling them, allow the butt to be a depth, let's say from the seat bite to the crotch buckle point. That depth I felt like was too large for this size child. And that would allow the butt to potentially be moved to one side or the other of this three-point harness.

When that happened, in these images you can see that with the old design the face of the doll is right up against the soft goods, which is caused by the very steep almost vertical walls, versus the new design which is not as steep and flared out. And we see that if a child were to put themselves in this position they would have a sufficient gap between their nostril, their airway, and the soft goods versus the old design.

Q. Anything else on 4.7 and 4.8?

A. No.

Q. Okay. We've talked about this a little bit, but my understanding is that, we'll call them doll, your doll is 22 pounds, which is more than we're dealing with in this case; correct?

A. Yes. This doll is larger than the -- yes.

Q. Right. A newborn. In fact, if you look at CDC growth charts, 22 pounds would hit at roughly an 11 to

12-month old; correct?
A. Yes.
Q. All right. And when you purchased this doll, does he have a name?
A. Called a newborn. Yeah.
Q. But how did you go about selecting this doll to use?
A. This doll is put out by a company called Huggable Images. And they create dolls for child passenger safety technicians.
Q. And do you know precisely what model number or make or?
A. Newborn.
Q. Just newborn?
A. Huggable Images, newborn.
Q. Got it. But in reality this is not a newborn at that weight, it's really an 11 month old?
A. Stature wise it should represent closely to a newborn, like, a larger newborn. The weight was modified for other purposes. So the Huggable Images didn't sell the doll weighted at 22 pounds, we added a sandbag. "We" meaning the company I work for added a sandbag inside this doll to be used for other purposes. I was just utilizing the doll as a representation.
Q. Got it. But -- okay. So at 22 pounds you added

lead shot or whatever it might be --
A. Sand.
Q. -- to increase the weight?
A. Yeah.
Q. But it came as a newborn from Huggable Images?
A. Yes.
Q. Save the weight issue?
A. Yes.
Q. Height, you're not quite sure of?
A. No. Not offhand.
Q. Right. And unlike -- you're very familiar with the FMVSS 213 CAMI infants?
A. Yes.
Q. And they represent 50 percent of children at six months of age?
A. Yes. Yes.
Q. And you've seen the photograph we've had of -- have you seen the photograph --
A. Yes.
Q. -- taken of the CAMI in the Rock 'n Play?
A. Yes.
Q. All right. And --
A. I chose not to use the CAMI.
Q. Why did you choose not to use the CAMI?
A. Because the CAMI is ridged in ways that a real

child is not rigid.

Q. But insofar as our purposes are concerned, a child at eight weeks of age is not going to be, as we already know, turning over, moving around. About the only movement you're going to get, according to his mother's testimony, was slight rotation of the head left or right. That was about it.

A. Yeah. You'll get some, some slight wiggling. Squirming.

Q. You would not expect to see an eight-week old rotate in the position shown in 4.7, 4.8?

A. Potentially. Potentially you could.

Q. If they were placed in that position?

A. Potentially they could move slightly.

Q. How could they move like this?

A. Well, the thought is that they could -- they do squirm a little bit, they can move a little bit. They don't sit exactly in that position. They can't move much and they could not correct themselves.

So had they started to squirm into this position and gravity and other forces worked on them and allowed them to move gradually into this type of a position, they would not be able to correct themselves out of this position.

Q. There's no indication that Asher at this age was

able to rotate at all or squirm at all; correct?
A. I haven't heard the mother's testimony.
Q. Right. We do know that contrary to the instructions and the warnings that Asher was not restrained; correct?
A. Again, I haven't heard the testimony.
Q. Well, assume that is the uncontroverted testimony in this case, --
A. Okay.
Q. -- that the infant was not restrained?
MR. MOORE: Was not what?
A. Restrained.
MR. MOORE: Restrained. Okay.
Q. Right. Was not restrained. The uncontroverted testimony is when the child was put in the Rock 'n Play they thought the restraining straps were dumb and did not restrain in accordance with the instructions.
A. Okay.
Q. As a manufacturer of infant products that's not a good thing, correct, not to follow the instructions of the manufacturer?
A. Yes.
Q. Okay. And we'll come to this in a minute, but you understand that a blanket was also put in the Rock 'n Play?

A. Yeah, I believe so.
Q. Right. And that's also against the instructions of the manufacturer, is it not?
A. Yes.
Q. Do you have an understanding as to the age limit the Rock 'n Play is intended for?
A. I don't recall. I can't recall right now.
Q. Simple question. It's not intended for a 22 pound, 11-month old; correct?
A. I thought it was. Maybe I -- maybe I'm mistaken right now.
Q. All right. Did you make an effort at the CAD drawings to note differences or similarities between what I'll call the old and the new plastics?
A. I was not given any CAD drawings.
Q. You were not given any CAD drawings?
A. No.
Q. Do you understand that they were produced in this case? That we produced the CAD drawings for this?
A. No, I have not seen them.
Q. You have not seen them. You can certainly take measurements if given CAD drawings; right?
A. Yes.
Q. You know how to use a measurement tool on a CAD file?

A. Yes.
Q. And you are capable --
A. Yes.
Q. -- of doing that?
The photographs that we see, do you know the model number of the product you bought?
A. No, not offhand.
Q. Did you buy it?
A. No.
Q. Who bought it?
A. Jan Hinson bought it.
Q. Jan Hinson bought it and gave it to you?
A. She purchased it on Amazon and had it shipped directly to my house.
Q. Do you have that at your house now?
A. No.
Q. Does she have it?
A. Yes.
Q. And so that would certainly have the model number inscribed somewhere on that unit; --
A. Yes.
Q. -- correct?
A. Yes.
Q. And do we know the age or the date of build of the new product?

A. Not offhand.
Q. Did it appear to you to be a new product?
A. Yes. It was shipped from Amazon in a brand new box. I opened the box and I assembled the unit.
Q. You did. It was shipped to you from Amazon?
A. Yes, it was shipped directly.
Q. All right. And when did you receive that?
A. That would have been in early September. I don't know the exact date.
Q. Right. So what you've done in these images is to take photographs of the new plastic insert in a reasonably, presumably recently manufactured Rock 'n Play. We can certainly determine precisely when it was built --
A. Yes.
Q. -- if we had that information, but you don't have that information?
A. Not offhand.
Q. And you didn't document that anywhere?
A. No.
Q. Do you know what the effect of folding up a, a somewhat malleable plastic insert for years is and the shape that it could experience if it's in a position -- this unit was six years old at the time you examined it, it would have been over six years old, as

contrasted with a brand new or reasonably brand new product; would you expect there to be some deformation if a product has been folded up in some position for years without being opened and used?

A. Yeah, if the plastic was deformed and folded into a deformed state and allowed to rest at that deformed state for, depending on the plastic, a certain amount of time, the plastic could take a set.

Q. And plastic has a little bit of a memory to it, not as much as some.

A. Yes.

Q. But it does have memory. So you would expect a product that has been folded up for years to exhibit some, perhaps, slightly, perhaps grossly different measurement characteristics if it has just been opened and measured, as contrasted with a reasonably recently manufactured product?

A. Potentially.

Q. Potentially. Exactly. So the best way to compare geometry of the two would be to look at the actual CAD drawings --

A. Uh-huh.

Q. -- of the two, because that will give you the specs and the geometry of the as new product; correct?

A. Yes.

Q. But you didn't do that?
A. I was not given the CAD drawings.
Q. Right. Let me -- I understand what you're doing with 4.7 and 4.8, but I want to address something.
Are you suggesting that an infant could rotate into a position that would result in obstruction to the nasal and oral airways?
A. Potentially.
Q. Did, and this is not anthropomorphically accurate, but -- this has no nose?
A. Yes.
Q. And one of the reasons, whoever is upstairs that got us where we are gave us a nose is so we can breath up this way and in this way; correct?
A. Yes.
Q. So if you're -- if you're nestling up something sideways you have a nose down here that can breathe that way (indicating?)
A. Yes.
Q. And children and infants breathe through their nose as well as their mouth; correct?
A. Yes. The fabric also could be loose.
Q. Well, the fabric is certainly a tight fitting fabric conforming to all of the standards; correct?
MR. MOORE: I'll object to the form.

A. The fabric complies with the standards, but it's still soft enough with enough padding underneath that potentially that fabric could get sucked up into the nose.

Q. Did you measure that?

A. No, I did not measure that.

Q. So that's just speculation?

A. That's just speculation; right. But there have been instances of bassinets and children -- children have asphyxiated in bassinets under very similar conditions.

Q. Right. The -- well, are you saying that this mimics a bassinet?

A. I'm saying in that way there is -- what I'm trying to say is the harness system in this product I didn't feel like controlled the positioning of the child enough, therefore, it potentially could create a situation where the face is pushed up against the fabric and there is a potential there of that fabric asphyxiating the child.

But this isn't the only position that the head could be in, the head could also drop forward with the chin on the chest. I'm not saying that this is the mode in which that child could move, but that the movement is, is possible.

Q. This is not the position that Asher was in according to the testimony of Miss Hinson; isn't that correct?
A. Yeah, that's correct. This is not the position.
Q. Asher was lying back, she could see his full face?
A. Uh-huh.
Q. And in fact, she positions -- have you seen the CPSC report?
A. No.
Q. Let me be sure -- looking at all of these pictures, let me understand the substance of what you're saying here.
The basis for your opinion that the shape of the curvature or the geometry, if you will, of the form of the mold changed, was because of the measurements we see depicted in Exhibits 4.0 through 4.6?
A. Yes. The mold change is depicted in those images by looking at the changes in dimension.
Q. That's your opinion?
A. Yes.
Q. The most accurate determinant of that fact would be a review and an analysis of the CAD drawings for the two molds; correct?
A. Yes.

Q. You also agree with me that time and compaction of the product can induce changes in the as built as new product?

A. If the product was deformed and let to sit deformed for a length of time, yes, the product could take a set.

Q. And you don't know the condition under which it was maintained over that period of time?

A. No, I do not.

Q. And if CAD drawings revealed no difference in the two forms, your opinion that these photographs showed some deformation would defer to the CAD drawings; correct?

A. If the CAD drawings for the new and the old showed the same form then, yes, the dimensional differences here potentially could be plastic set.

Q. And as I said, the explanation for that easily could be storage over a period of six years, heat, whatever it might be, wherever this might have been located, can result in some deformation of the originally designed plastic mold insert?

A. Potentially, yes.

Q. Let's look at your next paragraph. You say, "if a product is violative of recommendations, it is incumbent on the manufacturer to warn the public of its

danger."

People recommend things all the time; correct?

A. Yes.

Q. Every time there's a recommendation are you saying that there should be a warning that would reflect that recommendation?

A. It depends where the recommendation comes from.

Q. Right. You've already said you're not a human factors expert; correct?

A. Right.

Q. And you're not a warnings expert?

A. Uh-huh.

Q. It is simply your opinion that there should have been a warning if there were, if the product was violative of a recommendation.

So my question is this, what should that warning be?

A. It's my opinion that this product isn't safe for sleeping. And so I feel like the warning should be that children should not be left unattended to sleep in this product.

Q. Right. That's your opinion, not withstanding the fact that the ASTM says that it is safe; correct?

A. The ASTM does, yes.

Q. The ASTM has endorsed a 30-degree sleeping

incline by approving a standard for a 30-degree sleeping product; correct?

A. Yes.

Q. You disagree with that?

A. No, I don't disagree with that.

Q. Pardon me?

A. Sorry. I disagree with that, yes. I don't believe that it's safe.

Q. And that's primarily based on your reading of the 2011 sleep guidelines?

A. As well as the other documents --

Q. As well as the other --

A. -- published in the pediatrics journal.

Q. And we've talked about that --

A. Yes.

Q. -- until the cows are coming home, so we will let them come home.

A. Okay.

Q. All right. You say that, "the warnings were located underneath the bent-back edge of the upper part of the chair and on the underneath of the, between-the-legs strap in violation of the ASTM conspicuous requirement."

We talked about the possible malformation of the plastic insert of the old Rock 'n Play. The back of the

Rock 'n Play where the warnings are located on your new product is not bent; correct?

A. I think I'm referring to the steel frame which hasn't, didn't appear to be changed.

Q. The, the formation of the back where the warnings are located --

A. Yes.

Q. -- on the old product is essentially the same as the new product?

A. Yes.

Q. Located in essentially the same place?

A. Yes.

Q. And somehow from years or otherwise, a portion of the back, of the bottom, where the warnings are located on this product, was bent down; correct? Is that your observation?

A. No. Both -- I don't think the old product was bent down.

Q. Well, that's what you say. You say, "bent-back edge of the upper part of the chair."

A. Yeah, I'm referring to the steel frame that's bent; manufacturing process bent. Bent by design.

Q. Okay. Where -- the warnings are located where?

A. Back here (indicating.)

Q. And if you look at that, if you place the frame

on the ground where it is supposed to be located and with the way that back form behind the head is shaped, --

A. Uh-huh.

Q. -- you can observe that in a standing position; can you not?

MR. MOORE: Object to the form.

A. What do you mean by "a standing position"? I guess in relationship to where the seat is.

Q. If you were standing at the, what I will call the head of the bed, the head of the rocking --

A. Standing behind.

Q. Behind that and looking from a standing position. You can see those warnings?

A. If the sleeper is on the floor you potentially may not be able to see those warnings. If the sleeper was on the table maybe, but it's intended to be on the floor.

Q. Right. And you understand that this, that the R6070, the old as well as all the new, are tested for conspicuousness of the warning?

A. Yes.

Q. That's part of -- that's part of F2194. That's part of F3118; correct?

A. Yes.

Q. And you are aware that if you go to the inspection protocol for F2194-07 as tested for this very unit, the R6070, it passed the conspicuousness test; --
A. Yes.
Q. -- correct?
A. Yeah. I'm aware of that. Yeah.
Q. But insofar as conspicuousness is concerned, it passed the ASTM standard?
A. As written, yes, it had passed.
Q. All right. And then the warnings that are contained on the crotch strap --
A. Uh-huh.
Q. -- are laid out on the interior of the crotch strap, so when you look down at the crotch strap you see the warnings about always use this restraint; correct? So you're not complaining about that conspicuousness?
A. It depends how the crotch strap is positioned when you look at it. If the crotch strap -- I don't have a picture of it.
Q. If you put it in place you're not going to see it.
A. Right. The crotch strap is laying down in one direction, you don't see the warning.
Q. Of course. But if you lay it out before you put your infant down, you're going to look at the underneath

side of the crotch strap before it's folded up into the tummy?

A. Potentially not, is what I'm saying.

Q. You have to be blind if you didn't.

A. The crotch strap could be --

MR. MOORE: Let me object.

Go ahead.

A. The crotch strap could be lying down covering the warning and then you put the child on top of that crotch strap.

Q. Then you pull it out from underneath you still are going to have to look at the underside of that in order to position properly the crotch strap to pull it out, up, and over?

A. But if you don't see the warning that says you have to use it because the crotch strap has pulled it down, then you wouldn't know to pull the crotch strap out from underneath the child.

Q. The warning is also at the head of the bed, "always use the restraint system." Correct?

A. On the backside.

Q. At the head of the bed. At the head of the Rock 'n Play.

A. Uh-huh.

Q. That warning says, "always use the restraint

system"?

A. Right. I'm saying it's behind the product, though; right? You can't see -- we can't see the warning here.

Q. You could if you're standing back from the position as required by the ASTM standard for viewing warnings, you can see it, and it passed the ASTM warning conspicuousness criteria; correct?

MR. MOORE: Object to the form.

A. We do have a passing report, so, yes.

Q. Yes. We had the passing report and we know that it passed?

A. Right.

(Deposition Exhibit No. 7 marked for identification.)

Q. If we look at what's marked as Exhibit 7 and if we look at the language of F2194, it says 8.3.2, "the following warning's statement shall be included exactly as stated below and shall be conspicuous."

And it says, "warning, failure to follow these warnings and the instructions could result in serious injury or death."

And so that very first statement is consistent with 8.3.2.1; correct?

A. Uh-huh.

Q. And that's where ASTM is saying you have to use this precise wording?
A. Right.
Q. Then it goes on immediately underneath that, it says, "always use the restraint system." That's the very first warning there?
A. Yes.
Q. And if my statement to you a moment ago is correct, and I'll suggest to you that it is uncontroverted, neither Mrs. Goodrich nor Miss Hinson used the restraint system?
A. Okay.
Q. Also, when you were using the restraint system, I looked at some of these photographs and it did not appear to me, and correct me if I'm wrong, and they may not be in these particular photographs, but that the restraint if on was not as tight as it could be.
A. I tightened it to -- of course it's not as tight as it could be. I did not want to compress the chest of the doll, as I felt like a parent wouldn't compress the chest of their child.
Q. Right.
A. So I tightened it to what I felt was like a reasonable tightness.
Q. Do you have those other unused pictures?

A. (Indicating.)
Q. Let me show you what I was thinking about.
A. (Indicating.)
Q. I will just --
(Deposition Exhibit No. 4.9 marked for identification.)
Q. Are you saying that in -- let me just ask the question. It did not appear to me that that strap was that tight in 4.9.
A. I disagree. I made it as tight as I would suspect a parent would make that strap.
Q. Okay. But we said before you would not expect an eight-week old to move in a restraint system to that degree?
A. I think it is not impossible.
Q. You agree with me, as we looked this morning, that under section Roman Numeral XI.VI of 3118.15 that the constriction of the interior of the product is specifically designed to prevent that very rotation that is the concern of the AAP and of that type of rotation?
A. That's what it says in ASTM; yes.
Q. Anyway, we can go through these warnings. The warnings we dropped down to, "strings can cause strangulation," and that's actually in the instructional literature that's also mimicked here. It's not found in

the mandatory warnings under 8.3.1. But these warnings are what were on the subject Rock 'n Play at the time you looked at it?

A. Yes.

Q. And it says, "conspicuousness as defined in the ASTM standard." And you're familiar with the fact that ASTM standards do define such terms as "conspicuousness" --

A. Yes.

Q. -- so it's not left up to the mind of the beholder. It "describes a label that is visible when the bassinet/cradle is in a manufacturer's recommended use position to a person standing near the bassinet/cradle at any one position around the bassinet/cradle, but not necessarily visible from all other positions."

That's a requirement and that's what ASTM -- excuse me. That's what this product was tested to and was found to comply with?

A. Yes. I agree that that is written in here. But it's my opinion that that positioning is, is inappropriate. It's positioned at the exact opposite end of the usage area. So using the -- using this product you would approach this product from the front or the sides. I feel it very unlikely that a parent

would approach this product from the rear to put the child in or take the child out.

Q. Your opinion notwithstanding, though, ASTM testers, third-party testers found that this warning label in that position complied with the standard?

A. Yes. And also had been in the industry long enough if you go to one third-party tester and you don't get a result you want you move to the next one. And you --

Q. You're not suggesting that was done here?

A. I'm not suggesting that was done here.

Q. And you used GSC?

A. SGS.

Q. SGS. As does Fisher-Price.

A. They used SGS only for toxicity.

Q. Well --

A. They didn't use SGS for the other portions.

Q. On that particular test?

A. I haven't seen an SGS report on this standard.

Q. All right.

MR. MOORE: "This" meaning?

A. "This" meaning the F3118-15.

MR. MOORE: If you would just name it.

A. The inclined sleeper products. It says standard -- Standard Consumer Safety Specification for

Inclined Sleeper Products, F3118-15.

MR. MOORE: Okay.

A. We do not have an SGS report on this (indicating.)

Q. This goes on, "additionally, the warnings on the subject product are inadequate in that they fail to warn of the danger of positional asphyxia widely supported by pediatric studies and the AAP."

And we've already talked about that, I believe. I don't think we need to replow that, your position on positional asphyxia.

A. Yes. That's fine.

Q. We've talked about, I'll go to the next paragraph. "There are numerous issues with the subject chair. The angle of the incline is too steep and infants who lack neck muscle control are in danger of their relatively heavy head listing over." You discussed that a little bit.

What do you mean by "too steep"?

A. The 30 degrees of the back angle it's my opinion that that 30 degrees allows the head to fall forward.

Q. Right. And you've never done any studies to test that, have you?

A. Not specifically at 30 degrees.

Q. Right. And we've talked about earlier, and I

will not replow the ground of an eight-week old who is, we won't call him a lump of coal, but we'll call him Raggedy Andy since we have a male here.

But Raggedy Andy sitting here that inertia, gravity, coefficient of friction will leave that infant in place; correct?

A. Potentially. Yeah.

Q. And particularly where the mother has said the infant was incapable of rolling over or moving his head other than very slightly to the left or right at seven weeks of age. That would be consistent with children acting that way at ages seven weeks of age?

A. Right.

Q. Do you have any understanding or opinion as to what degree of listing over would be required to compromise oxygenation?

A. Depending on the child. Depending on the anatomy of the child. So without knowing the specific anatomy of the child, in previous research that I've done on infants sitting reclined, some can tolerate angles that others cannot.

Q. I don't understand that. What do you mean by tolerating angles?

A. We're talking about airway compromising. So putting one child at 45 degrees, his airway may stay

open. The next one may not stay open at 45 degrees. One may stay open at 30, one may not stay open at 30.

Q. Are you saying that airways are closed at 45 degrees?

A. Some children have trouble leaving the hospital at 45 degrees.

Q. The preemies?

A. Some newborns that are ready to leave the hospital have the issue.

Q. The issue has been, has it not, with respect to seatbelt or infant car seats --

A. Yes.

Q. -- that preemies leaving the hospital have very immature airways?

A. Yes.

Q. They are subject to desaturation. And as a result of that infants are now tested at the hospital before they can even leave the hospital in an infant car seat; correct?

A. Yes, that is correct.

Q. Right. And if they cannot tolerate an infant car seat then they are placed in a car bed?

A. Yes.

Q. And that's the only way in 2017 babies in the United States, at least, get to leave the hospital?

A. The hospital, right. But I don't think that is definitive -- that isn't only for preemies.
Q. I won't draw the, the term limits of 39 weeks of gestation strictly around that. But we're talking 45 degrees of angle versus zero degrees?
A. Yes.
Q. And even in the studies and that European study, there was as between hospital error on the one hand and car bed error on the other, there was some desaturation just on an infant lying in a car bed?
A. Yeah.
Q. Do you remember that?
A. Yes.
Q. And that is flat on their back?
A. Right. As saying every child is a little bit different.
Q. But they did a cohort of a number of babies?
A. Yes.
Q. I guess what I'm trying to figure out is if you've got Raggedy Andy sitting there at seven weeks of age who is described by Momma as not moving, --
A. Uh-huh.
Q. -- and who has the natural physical forces operating on him, i.e. coefficient of friction, gravity, --

A. Sure.
Q. -- and inertia --
A. Yeah.
Q. -- and that infant is not moving.
A. Well, the infant is seated at 30 degrees so gravity will want to push that infant down to the bottom of that 30 degrees.
Q. But which force is greater, the vertical moment or that longitudinal moment?
A. At 30 degrees it's going to be a vertical moment.
Q. Right.
A. Right. But we also have the coefficient of friction that you mentioned.
Q. That's right. It's going to impede.
A. But we don't know what the coefficient of friction is on this seat. This fabric here had a very silky satiny feeling to it, which would change that coefficient of friction.
Q. What would you estimate the coefficient of friction of that material to be?
A. I wouldn't even want to estimate it right now. I don't know.
But what I'm trying to say is we got the gravity trying to push this child down, the vertical moment is going to be more than the horizontal moment, I agree.

But there's also going to be some reduced coefficient of friction because of this soft material. I don't know exactly what material the child was wearing at the time and there's also the inertial effect, so the whole thing rocks; right? So as that rocking motion happens there could be inertia.

Q. But it wasn't rocking at the time, he was just placed in there, nobody came over and touched him.

A. Do we know that?

Q. Pardon me?

A. I don't know if I know that.

Q. That's the fact.

A. That it was perfectly still?

Q. Perfectly still.

A. I find it hard to believe that anybody could say that it was perfectly still.

Q. If it was placed in it, Raggedy Andy went to sleep and that was it?

A. I used to live in a high-rise, on the 45th floor of a high-rise building, it seemed perfectly still yet my chandelier would move.

Q. That's at 45 floors.

A. Yeah.

Q. You're on a school floor of concrete.

A. I'm saying we can't say definitively. I don't

feel like I can definitively say that there was no motion.

Q. You certainly cannot say that there was some third, --

A. Right.

Q. -- some third-party force acting on it?

A. I can't say that either.

Q. Right. You produced today a, what was it, what was the standard, the 1500 standard that you had? The federal reg CFR on edges.

A. Yeah. Yeah. Yeah.

Q. You make the comment here that the design poses -- excuse me.

"There is a sharp unsecured plastic edge on the underneath plastic shell that angles sharply upward underneath the padded fabric"?

A. Uh-huh.

Q. Are you saying that this was a sharp plastic edge that was violative of a standard? You brought CFR 1500.48?

A. Yeah. What -- what I was trying to talk about here, maybe I didn't word it appropriately. I'm talking about this edge here (indicating.) As we look at this design versus this one, you can see this design rolls over and it has this wide edge that flanges outward

versus this one here having this sharp edge.
Q. Do you know the purpose of that flange?
A. The purpose of this flange (indicating?)
Q. Yes. And tell me so that we have a record, what photograph are you looking at?
A. I'm looking at 4.4.
Q. Okay.
A. And you can see the flange, let's say it's perpendicular to the curve almost.
Q. Right. Do you know the purpose of the flange?
A. It looks like that's where it's sewn together.
Q. Do you know why they did that?
A. Probably cost reduce to get rid of the pocket.
Q. Do you know of a mold issue that we had with that product?
A. No.
Q. Do you know that it was sewn like that so it could be more easily cleaned?
A. No.
Q. But we do know that there is a requirement in F2194-07 and 10 on hazardous sharp edges or points and you cannot have it.
A. Right.
Q. And we know that this chair, this sleeper passed that crib and bassinet standard, so that the third-party

tester found that there was not a sharp edge in violation of the standard that you brought which was 16 CFR 1500.48?

A. Yeah.

Q. So should that come out, or does that form some part of your opinion in this case?

MR. MOORE: Which?

Q. The sentence that reads, "there is a sharp, unsecured plastic edge on the underneath plastic shell that angles sharply upward underneath the airway."

A. It doesn't say, "underneath the airway."

Q. Pardon me?

A. It doesn't say, "underneath the airway." It says, "upward."

Q. Sharply under -- I'm sorry.

A. "Padded cover."

Q. Let me reread that question because I can't read.

"Item 2, there is a sharp, unsecured plastic edge on the underneath plastic shell that angles sharply upward underneath the padded fabric cover."

Is that an issue that probably should be removed from your report?

A. Yeah. I don't necessarily see that causing a problem, yeah.

Q. Right. The design poses -- the next sentence.

"The design poses a danger, in that the baby's head can list over, compromising the airway."

A. Yeah.

Q. Is that what you were trying to show in 4.7 and 4.8?

A. No, that's what we've been talking about all along with the idea of the 30-degrees incline. And allowing the child to sleep inclined.

Q. Okay. The next, "the three-point harness is not positioned appropriately, offering no ability of the product to prevent compromised positioning."

A. That's what I'm trying to show in 4.8 and 4.9.

Q. And that's what we've talked about earlier today, which was the side-to-side restraint built into the design of the plastic mold itself, that was specifically addressed in F3118-15, section Roman Numeral XI.VI; correct?

A. Yes.

Q. And you read that into the record right before lunch?

A. Yes. That's in the ASTM standard.

Q. So that the three-point harness is not the primary restriction system in this design, but rather it is the molded shape of the plastic insert; correct?

A. Potentially. That could have been the desire.

Q. Right. And do you know that 3118.15 does not even require a restraint harness to be built into this type of product?

A. No, I wasn't aware that that wasn't in here. But regulations are not always completely inclusive.

Q. Right. But that's the whole reason that section 11 was built, excuse me, section XI.VI was included in the standard --

A. Uh-huh.

Q. -- to explain that that side-to-side restraint system is what was the primary restraint to prevent --

A. Uh-huh.

Q. -- the very positioning issue you have addressed here.

A. Yeah. And I feel like it's not sufficient to prevent that.

Q. Right. And there are measurement systems built within 3118-15 to ensure that the angles imparted by that, --

A. Right.

Q. -- by what I call the funnel effect, are appropriate and in accordance with the ASTM standard; correct?

A. They meet the ASTM standard.

Q. Right. Then you say, "the flat hard back of the

insert is shaped improperly for the soft and malleable skull of a newborn, adding to the stress on the skull and/or creating a tendency for the baby to turn the head for relief."

Now, we talked about that a little bit earlier today and I don't know if I need to delve back into that this much. But you haven't done any testing on this with an angled inclined sleeping product at 30 degrees; correct?

A. No. My only testing has been with the car seat.

Q. And you say "adding to the stress on the skull"?

A. Uh-huh.

Q. What's the basis for saying that?

A. The stress. I mean by the, the weight of the head of a child of this age is the greatest portion of the weight of the body. So the weight of the head sitting straight back with the back being where the head dropping below the back plane, that creates more force and more stress on the head, which is going to cause the child to want to either bring the chin down to the chest or to list over to the side. That stress of sitting straight like that is going to allow that head to move in some direction to alleviate the stress.

Q. But the point is, with an inclined sleeper at 30 degrees as opposed to a car seat at 45 or greater up

closer to 60?
A. 45 or less.
Q. 45 or less?
A. Yes.
Q. Going up vertical?
A. No, going down to the horizontal. It's horizontal up to 45; never higher than 45 from the horizontal. For rear facing.
Q. For rear facing?
A. Rear facing seats.
Q. If you get into juvenile car seats?
A. Forward facing seats things are different.
Q. Yeah. Forward facing car seats the angle in that is what?
A. It depends on what age it's for and what product it is.
Q. Sure. So roughly, give me rough numbers for ages two through five.
A. Two through five it may be --
Q. In forward facing seats.
A. In forward facing seats. It may range anywhere from 45 degrees to counting up to the vertical 80 degrees.
Q. Right. And most of the car seats have the ability to, to change the angle; correct?

A. Yes.
Q. All right. And is that one of the things you work on?
A. Yes.
Q. All right. And so you can actually adjust the angle from, a low angle of 45 up to greater degrees towards the vertical?
A. Yes.
Q. Do you have, just out of curiosity, are there forward facing juvenile car seats that incline to 45 degrees?
A. Yes.
Q. Forward facing?
A. Forward facing, yes.
Q. So I'm going to go back to your term, "stress on the skull."
A. Uh-huh.
Q. You are just talking about the weight of the skull?
A. I'm talking about the weight of the skull in conjunction with the protrusion of the skull from the back plane. Those two forces in conjunction caused the child's head to list or move.
I mean, as we can see in this picture of Asher, you can see his head is tilted off to the side as well

as it looks like his chin is quite close to his chest.
Q. Which would be a normal position with no compromise whatsoever of breathing?
A. I can't say that.
Q. Are you suggesting that he's turning his head to the side for relief or is that the way he went to sleep?
A. I'm saying that he potentially may have tried to turn his head this way for relief, or it could be gravity, or it could be the fact that his head is protruding out back and he's on a flat surface. There are several forces that could cause his head to move off to the side.
Q. And what we see in that photograph is Asher asleep or close to being asleep is a posture you would expect to see in a seven-week old child?
A. I don't know if we can say that --
MR. MOORE: I object to the form.
A. I'm not sure we can say he's going asleep or about to be going to sleep. I can't really say that here. Right? I don't know when this picture was taken or what the situation was.
But in a 30-degree inclined seat, yes, I would expect the head with a flat back 30 degrees inclined, I would expect the head to list forward and possibly to the side.

Q. All right. Tell me exactly why you say to list forward? That's what I'm trying, I've been trying to drive at all day long. How does a head list forward?

A. Again --

Q. Anymore than you see in that photograph right there, which is a normal infant lying in a 30-degree angle.

A. The main driver for the head listing or falling or moving forward is the protrusion of the back of the skull beyond the back plane. In an adult the back plane, if you were laying flat on a table, an adult's head would fall backwards into the back of the head, hit the table, because the back protrudes further than the back of the head.

Q. Right.

A. In a child the back of the head protrudes beyond the back plane. So if a child were to lay perfectly flat on a flat table you would start to see the chin coming close to the chest. So the head would tilt forward in an incline. And the reason that I've never done any inclined sleeping products --

MR. MOORE: This is Exhibit 6.

A. Exhibit 6, yeah. Is -- that's one factor. So having a flat back would cause the head already to start moving forward. And now that incline you're going to

have the forces of gravity coming down. So you start to change that moment.

Q. The greatest moment we've already described is the vertical moment holding the head down and in place. Back and in place.

A. If the child is sitting perfectly at 30 degrees, meaning the spine is aligned perfectly at 30 degrees, I agree.

Q. Well, you would be if you're lying flat on your back?

A. Well, you wouldn't be. The head of that child protrudes beyond the back surface. So if the back surface is at 30 degrees and the spine is at 30 degrees, once the head pushes forward on that back plane the neck of that child is no longer at 30 degrees, the neck of that child could be at 45 or 55 degrees. In which case that moment coming down it is from, its gravity is different.

Q. So when you say "45 to 50 degrees" you're talking about 45 to 50 degrees from the horizontal or an increase angle of wedge, if you will, of 15 degrees?

A. I'm ad-libbing what the degree shift between the back on the neck could be.

Q. You don't know, you never measured that?

A. It depends on the child, and it depends on how

much the child's head protrudes beyond the back surface.

Q. Right. But you are simply with, off the top of your head, suggesting that with no studies, with no data, just a guess on your part, that --

MR. MOORE: Object to the form. He's testified to the study.

MR. HINES: He can say yes or no.

Q. With a guess on your part as to what the angle imparted by a child lying flat on his back might be to the, to the plane of the torso. And you're speculating that that degree might be 15 degrees; correct?

A. We did a study, although brief, we did a study at the hospital, and if you look at the patent that was applied for, it calls for a 1-inch pad behind the child's back to accommodate children of different sizes and head. And that was intended to allow the head to drop back and to keep the spine and the airway parallel to the black back surface.

If that back surface of the product in question is a completely flat line as a table would be, whether it's inclined or flat, the dimension in which that child's head protrudes back behind the back surface would now cause an angle shift in the neck.

So although the spine in the back may be at 30 degrees that portion of the neck is no longer at

30 degrees. I'm not going to speculate if it's 5, 10, 15, 20, it depends on the child and depends on how large the head is compared to the back.

Q. And are you aware of studies in the world's literature where children's heads have been wedged forward to determine whether or not their airway is compromised?

A. There have been studies in the Journal of Pediatrics where putting a child on a flat inclined surface caused desaturation in the oxygen.

Q. I'm not talking about that study. Or those studies. I'm talking about where you have actually imparted a wedge behind an infant's head so that the head relative to the torso imparts an angle of roughly anywhere from 5 degrees to 35 degrees to even greater, if you --

A. I'm not aware of any study like that.

Q. You haven't read those studies?

A. No.

Q. You're not aware of them, nor have you read them?

A. No.

Q. Then under item 5 it's somewhat repetitive of what we said before, and I don't mean to say repetitive. But "the strap system is inadequate does not prevent the infant pelvis from sideways movement"?

A. Uh-huh.
Q. We've talked about that a little bit above or is this different now?
A. No, I think that's fairly the same.
Q. All right. And we've also described, and I'm not going to go back over it again, the fact that the principal containment in this design is the shape of the molded plastic to prevent that type of rotation and impingement. And that's in section XI.VI of the standard.
"There is no head surround to aid the infant with neck control." Are you aware of any infant product that calls for a head surround to aid the infant with neck control?
A. Car seats.
Q. Other than a car seat?
A. Other than a car seat, no.
Q. Have you ever seen a head surround in an infant sleep product?
A. No.
Q. Let me go back to item 4. We've talked about "the flat hard back of the insert is shaped improperly for the soft and malleable skull of the newborn, adding to the stress on the skull and/or creating a tendency for the baby to turn their head for relief."

Where does the notion of an infant lying on a surface such as that in a Rock 'n Play having a tendency for the baby to turn their head for relief; what is the basis for that statement?

A. It can be seen in obviously this photo right here (indicating.)

Q. You're saying that Asher is moving his head for relief?

A. No. I'm saying that -- I guess I'm saying potentially there could be, the child may want to move the head for relief.

Q. But you have no studies that say that?

A. No.

Q. All right. The last paragraph of your report before you start listing those things on which you base your opinion is that "in conclusion and for all the reasons stated above, it is my expert opinion that Fisher-Price did not exercise the due diligence required in developing a safe sleeper and did not develop a product that complied with recommendations for safe sleep."

What due diligence did Fisher-Price fail to exercise?

A. In my opinion the information from the AAP talking about flat sleep and flat sleep being the

safest. That in conjunction with, you know, when you look at these photos of the inclined sleeping and we see the head coming forward and we see the chin touching the chest or coming close to touching the chest, and we look at those images and we look at what's coming out of the AAP, in my opinion I would never have developed a product like this based on that alone. Regardless of whatever ASTM may allow me to do. So that's why I'm speaking about due diligence.

Q. Are you saying that if you look, and you pointed to Exhibit 6, with Asher lying, apparently, not in distress, otherwise, they wouldn't have taken the picture of him sitting there, and that that is a compromising position?

A. We don't know if he's in distress or not. He can't tell us.

Q. Well, children will screech if they're in distress; right?

MR. MOORE: I will object to form.

A. Potentially. Potentially not.

Q. Will they choke or cough or spit up?

A. Potentially. Potentially not.

Q. Do you have any experience with that?

A. With them coughing or choking?

Q. Yeah.

A. In the study we did in the hospital when we put children in seats where the, we measured desaturation of the oxygen, some of them cried, some of them didn't. I didn't see any of them choke or cough.

Q. All right. So they were apparently breathing normally, it was just for whatever reason their saturation levels dropped ever so much?

A. The thought is that the airway was compromised and the volume of oxygen coming into the child was not sufficient and therefore the desaturation -- the oxygen --

Q. Oxygen saturation levels vary constantly, do they not?

A. Yes.

Q. And do you know the, the variations in the pulse-ox readings, just normal variations, what the tolerance is?

A. I can't recall offhand.

Q. I think I asked you speaking of tolerances, and I may or may not have, but with that protractor you used in your test, that's only advertised to come to within 1 degree of accuracy; correct?

A. Yeah.

Q. So I mean, it's not -- it is not a finely tuned piece of equipment?

A. No, it is not. That's why I'm saying it's approximately at 32, 32 degrees, yeah.
Q. So is it -- you're simply saying any manufacturer who developed an inclined sleep product is not exercising due diligence?
A. That's my belief, yes.
Q. Irrespective of product? Irrespective of the design of the product. If you develop an inclined sleep product that satisfies ASTM standards you're not exercising due diligence?
A. That is my belief.
Q. And as -- I won't go over it again.
We're getting into some legal language here, but did you write this, "the Fisher-Price newborn sleeper is not fit for its intended use."
Are those your words?
A. Yeah. Because it's called a sleeper. And I don't believe it's fit for use as a sleeper.
Q. "And it is not safe for use as a sleeper." Is that for the reasons you stated above, because it might impart an elevated risk of airway compromise?
A. Yes.
Q. But you don't know that? That's the problem.
A. I know that based on the research that I've read, on the documents that I've read, and on the study that

I've done and everything in my experience, yes.
Q. But the study you've done can't be replicated because nobody has seen it; --
A. No.
Q. -- correct?
Nobody can test your results, nobody has seen those results?
MR. MOORE: Objection to form.
Q. All you can do is tell me you conducted a test that meets such and such a result?
A. Right. The result was not published.
Q. Not only were they not published, they're not even available.
A. No. But similar -- similar studies have been done.
Q. Well, if I tried to go replicate that test I can't go replicate it or duplicate that test because I don't know the test protocol that was used.
A. True.
Q. Isn't that fair?
A. That's fair.
Q. And you go on to say, "as is more fully stated in the many articles and studies from which the American Academy of Pediatrics developed their recommendation that newborn infants sleep fully flat on their backs,

which articles were produced by Fisher-Price in this lawsuit and were in existence prior to Fisher-Price developing the product."

Now, the 2011 sleep standard was not in existence when this product was developed; correct? So that statement is wrong. To the extent it talks about the sleep product, it's saying you should be supine on your back.

A. Some of those other research papers were prior to 2011.

Q. I know I've asked you this a thousand ways from Sunday. But other than the car seat articles that preceded this, and other than the swings and slings, there have been no, there was no article preceding this that articulated a concern of elevated sleeping at an angle of less than 45 degrees?

A. The car seats in those studies were up to 45 degrees. I can't speak for every car seat in the study. I can't tell you what the back angle is. But I know it would be from zero being level to earth up to 45 degrees. So I --

Q. Right.

A. I can't say they were.

Q. But you have to impart an angle of at least 45 degrees to satisfy the standards because of the

concern about shoulder and neck in an accident; right?
A. That is one way to manage the, to mitigate the crash forces.
Q. Right. And that's the reason the car seats are not manufactured, rear facing car seats are not manufactured in an angle less than 45 degrees?
A. Some are. I think I said that earlier. Some are. There are other ways to manage the crash forces. The most common and easiest way to manage the crash forces is to keep the child at 45 degrees or higher. But it's not the only way to do that.
Q. Well, and that's certainly the American Academy of Pediatrics recommendation, that is keep the car seat angle at 45 degrees?
A. Yes.
Q. And as we've discussed very early today the very reason for doing that is to prevent head-to-chest compression?
A. It's a compromise. It's a compromise between mitigating crash forces and the chest-to-head compression. But also, car seats do carry a warning that tells a parent not to allow the child to be prolonged in car seats or sleep unattended in car seats, because that 45 degrees is not an ensurement that the chin does not touch the chest.

Q. Right. But the principal concern is the straps and the compression on the chest. And strangulation from straps on the car seats and everything else, that's --

A. I've never heard that.

Q. You've never seen that?

A. No.

Q. Oh.

A. That the compression of the harness on the chest --

Q. Yes.

A. -- would prevent the child from breathing appropriately?

Q. Sure.

A. That I haven't seen.

Q. You have not seen it?

A. No.

Q. We'll get those for you for your next deposition.

Other than the measurements that you took of the width of the plastic insert, when you compared the old car seat, excuse me, the old sleeper with the new sleeper, did you see other design changes?

A. Yes. I think we spoke about the, the apparent depth being different. And unfortunately I couldn't get an image to measure that appropriately. But we look at

the depth of the, of the wings to the back surface appeared different, and the angle at which they flare outward. So it would be flaring from the back to the outside.

Q. Right. That flare is based on the measurements you've done?

A. Well, that flare is the flare in the vertical direction, but also the flare in the horizontal direction.

Q. All right. And the flare in the horizontal direction is the one that you are basing your tape measurements on, from, as you go up?

A. Yeah.

Q. The --

A. It was hard to -- if we were to take a cross-section -- my tape measurements, looking at the child in the face, you can see the difference in the angle at which this seat flares upward from the bottom to the head. Okay.

The other thing I noticed, which was tough to take a photo of, is if we were to take a cross-section through the plastic pieces the shape of the shell in the old one looked to be more U shaped cross-section versus the other one looked like it had more of a flat surface and then an angling up.

Q. Right. And the definitive word on whether or not what you believe you're looking at is accurate or not would be the actual CAD drawings for the mold?

A. That's correct, yes.

Q. You list patent applications for the subject sleeper, what if any significance do you attribute to the patent applications?

A. I don't know what I was, why I listed it here. I reviewed the patent, I looked at the patents, but I didn't see any significance.

Q. There are three -- before we close this out, there were three other documents. The one document we did identify was the F3118-15 standard that was, --

A. This one.

Q. -- that was inserted here at 89 through 105; did we identify the other documents?

MR. MOORE: I don't know. What other documents?

MR. HINES: The three documents on his report that you included that were not in his material.

MR. MOORE: Yes, we have them on his document. We have not identified them.

MR. HINES: I don't know what that document is.

MR. MOORE: Huh? I mean, I don't know the

name of them. Unless -- there were 2,700 pages of material. I can go back and you can have it. If not, we can identify, identify it by Bates number. That's how I did it.

MR. HINES: Well, let me make a phone call. I can make a phone call.

(Pause.)

MR. HINES: So this is?

MR. MOORE: This is 1226.

MR. HINES: Which is a part of a document 1223 through 1238.

MR. MOORE: 12 -- I have 1226, I have 1223, 1280, 1279, 1267. Do you have any of those numbers?

MR. HINES: I've got 1267.

MR. MOORE: 1267.

Q. Let me just ask him. I know what they are.

The numbers that are also identified, and I want to find out what if any significance you attribute to these.

A. Yeah.

Q. And that is document 1279 through 1290 is an instruction for Rock 'n Play Model CHP39; any particular significance on that?

A. Yeah, when you look at this image you see the child in these images is quite large.

Q. And what -- all right. And what page are you talking about, specifically?
A. It's on 1267.
Q. On 1267?
A. Also, if you look at 1279, again, it's a quite large child; but it's really defined here in 1267. This child is clearly over 22 pounds.
Q. Well, you don't know that?
A. No, I don't. But if you look at the stature in this one compared to this one, and if we look at the sewn seam on the top of the headrest and that relative distance to the head versus this head is above the sewn seam, so we can depict by that that this child depicted here is quite larger.
Q. That's your opinion based on that photograph?
A. Yes, that's true.
Q. That 1279. Which is --
A. Again, shows the sleeping baby. And again you can see --
Q. All right.
A. -- it's quite large.
Q. So all of that is your opinion that it's a large baby?
A. It's my opinion, yeah. That what's being depicted in the manual and the directions is a larger

child than what is being put into the seat. Is my opinion.

Q. Does that have any affect on any of your opinions in this case other than you think the child may be older than five months old?

A. I think when we talk about the fact that there's differences between the new and the old and that potentially Fisher-Price knew that this product was not, in my statement there, we say, we say that it looks to me like Fisher-Price understood that this design was not adequate for sleeping. They obviously changed the design if we look to the new one, it looks apparent through the dimensions, if we look at these, the images, they're depicting larger children. And I think if we go back to that other one.

Q. But then if these dimensions did in fact not change based on the CAD drawings then your opinion would be incorrect?

A. That's correct.

Q. All right. There was another page 1223 through 1238?

A. Yeah. That one shows that they changed the name; right? I don't know if it's 1226. Well, 1226 we see that it's changed from a sleeper to a soothing unit.

Q. Right. And do you know where that instruction

was used?
A. It looks like Mexico.
Q. Pardon me?
A. Mexico. South America.
Q. It's got some Spanish in there?
A. It's all in Spanish.
Q. Do you see French in there?
A. I don't see French. This looks like all South American countries. It actually has South American countries listed here.
Q. I can't tell where this is from. It's only part of a document. Let me look through my notes, this may be the end of Phase I.

(Short break taken.)

EXAMINATION

BY MR. MOORE:
Q. Tell us your qualifications as a product safety engineer for children's products.
A. My qualifications?
Q. Are you a product safety engineer for children's products?
A. Yes, a product safety engineer, yes.
Q. For children's products?

A. Yes. For children's products, yes.
Q. What is your educational background?
A. Mechanical engineering.
Q. From where?
A. Western New England College.
Q. And have you been in product safety engineering your adult career?
A. For the last nine years.
Q. For the last nine years?
A. For the last nine years.
Q. Have you designed products incline, incline products for children to be in?
A. Yes.
Q. Whether it's a, a car seat or other products?
A. Yes. I've designed only car seats which are inclined surfaces for children.
Q. Okay. Do you have education, training, and experience in the area of product safety engineering on children's products?
A. Yes.
Q. And are you employed now as a children's product safety engineer?
A. Yes.
Q. If you knew that this product was, was manufactured on June 3, 2011, would the 2941-10

standard, would that be the one that would apply and not the 07? The standard that was in effect prior to the manufacturer of the product?

A. Yes.

Q. So that's what you would look for?

A. Yes.

Q. Have you ever -- when was the first time you ever heard the term "incline sleeper"?

A. To be honest, not until this case.

Q. Is that a new category as far as you're concerned --

A. Yes.

Q. -- of product?

A. Yes.

Q. Do you know of any expert in the United States that's an expert on inclined products other than engineering people that do product safety --

A. No.

Q. -- for children?

A. No.

Q. Were you ever asked by your employer to design a sleeper?

A. At a previous employer they did talk about designing an incline sleeper, yes.

Q. Did you look into that product to do it?

A. Yes. Yes.
Q. And did you in fact make a sleeper?
A. No. My recommendation at the time was that inclined sleeping was not safe.
Q. And why was that?
A. As I refer to the academy of, American Academy of Pediatrics, and I looked at the publications that were available to me at the time, it felt that inclined sleeping was not safe.
Q. Okay. Whether it's 30 degrees, 28 degrees, 25 degrees, or 50 degrees?
A. Yes.
Q. In fact, the American Academy of Pediatrics recommends that you be in a complete supine position, meaning horizontal; correct?
MR. HINES: Object to the form.
A. Yes.
Q. What is to your -- let me rephrase that.
What to your knowledge is the standard or the recommendation by the AARP -- I mean, by the American Academy of Pediatrics for a child?
A. For a child to be completely supine, level to earth, flat.
Q. All right. Do you know of any other manufacturer or product that sits a child up at a 30-degree angle

while having the child cradled in a sleeper?
A. No, I do not.
Q. Do you know any other manufacturer that does that?
A. No.
Q. Do you know of any cribs or bassinets that are at a 30-degree angle?
A. No.
Q. And in researching this material did in fact this company refer to their product as a hammock?
A. They did.
Q. Do you, in your, based on your knowledge, your training, and experience, and education in the area of product safety for children, do you feel like this particular product is a, is inherently dangerous to a child?
A. I believe so.
Q. As a sleeper?
A. As a sleeper, yes.
Q. Okay. And what is the major difference between the car safety seats at 45 degrees and this product at 30?
A. The difference in terms of?
Q. The difference in terms of safety for the child.
A. Well, a car seat is designed to withhold the

forces of impact or mitigate the forces of impact in a car accident. A car crash.

So that is positioned at 45 degrees in order to help mitigate those forces along the broad surface area of the child and not focus those forces on the neck or the head. So the 45 degrees is a compromise in terms of compromising the energy mitigation versus the airway control.

Q. Okay. Do you feel like based upon your education, training, and experience, and the study that you have done at the hospital, with other doctors and things of that nature that you directly participated in, do you feel that this product at 30 degrees could cause positional asphyxia to the child?

MR. HINES: Object to form and foundation.

A. Yeah.

Q. You know what positional asphyxia is?

A. Yes.

Q. Tell us what that is.

A. So positional asphyxia would be if the child was malpositioned with the head and the chin, the head tilted forward, the chin down on the chest. It has -- it could produce positional asphyxia, meaning the esophagus, the trachea, excuse me, the trachea could be compromised because of that head positioning.

Q. Okay. Are you saying that the child could move over to the side or that the chin, that the head could fall down onto the chest, either way it could cause --
A. Either way.
Q. -- asphyxia with lack of oxygen to the child?
A. Yes.
Q. Okay. Is that your understanding of what may have happened to baby Asher in this case?
MR. HINES: Object to form and foundation.
A. Yes.
Q. Prior to 2011 had you ever heard of the term an "incline sleeper"?
A. No, I have not.
Q. As far as the warning label is concerned, do you feel like you've looked at the product and are you familiar with the warning labels that one puts on products?
A. Yes.
Q. And how are you familiar with those warning labels? Through your own job?
A. Yeah. Yes. We create warning labels all the time.
Q. And the warning label on this product, is it in a conspicuous place in your opinion?
A. In my opinion, yes.

Q. Is the warning label in a conspicuous place on this product?
A. In my opinion, yes.
Q. For the entire product or for the part that goes across the child?
A. Both. I feel like the warning label for the product in general is positioned behind the product, behind the child's head, in an unusual area.
Q. That's what I said. My question was do you find that it's in a conspicuous place where you can see it and you said yes. Are you now saying no, it's not?
A. It's -- I feel like it's in a --
Q. Let me ask you this. Do you think that the, that the warning label is in a position where people can see it who use the product?
A. No.
Q. Tell me why.
A. When using the product you're going to approach the product from the front, and put the child in maybe from the side and put the child in.
Q. Right.
A. But I feel it's very unlikely that a parent would position a child from the rear of the product and utilize the product from the rear of the product and that's where the warning label is.

Q. Do you think that, that the position of the, of the warning label is inadequate to adequately warn the consumer?
A. Yes.
Q. As far as the shell is concerned, as far as the plastic shell is concerned, did you measure the thickness of the shell?
A. I did, yeah.
Q. And is it thicker than the other plastic?
A. They appear to be the same.
Q. They appear to be the same thickness?
A. Yes.
Q. All right. In your education, training, and experience, have you ever known that plastic will, will completely transform itself into a different shape after a period of time?
MR. HINES: Object to form.
A. In my experience the plastic is going to have a molded memory and it's going to maintain that molded memory. Unless acted upon on some other type of deformation.
Q. But a piece of plastic should not change shape --
A. No.
Q. -- unless forced to change shape?
A. Yes.

MR. HINES: Object to form.
Q. Would you agree with that based on your education, training, and experience?
A. Yes, I would agree with that.
Q. When you looked at these two pieces of plastic and then -- when you looked at the two pieces of plastic did it appear to you, based on your knowledge, education, and training, and experience that they were two different pieces of plastic, one more malleable than the other?
A. No, they appeared to be the same plastic, the same material that you're asking.
Q. What I'm asking you, was the shape the same?
A. No, the shape it felt different.
Q. Was the plastic -- was one more flexible than the other?
A. No.
Q. Okay. If the product -- have you ever known that a product can get larger, like, the plastic shell would actually increase in size over time?
A. No.
Q. That doesn't happen, does it?
A. No.
Q. Now, you kept the -- the question was you have done numerous studies on car safety seats from zero to

45 degrees, "zero" meaning horizontal, "45" meaning 45 degrees from that horizontal; correct?

A. Yes.

Q. All right. So that would also include maybe 15, 20, 25, 35 degrees; right?

A. Yes.

Q. And so when you kept answering the question about not at exactly 30 degrees, you were talking exactly 30 degrees as opposed to 28 degrees or 31 degrees; correct? Is that right?

A. I'm sorry?

Q. Do you understand what I'm saying?

A. No, I don't.

Q. Okay. Mr. Hines kept asking you about 30 degrees.

A. Yes.

Q. Okay. And you said, "well, I've done a lot of these tests on car seats between zero and 45."

A. Yes.

Q. So you've done them in different degrees between zero and 45, would that be accurate based upon your training?

A. Yes.

Q. Okay. So would it be your position that no such expert exists at all as to any of the baby product

experts would necessarily, would exclude this product as a possibility?

MR. HINES: I'll object to form.

Q. Do you know of any experts -- do you know of any experts who are experts on this particular incline sleeper?

A. I do not know of any.

Q. Is this the only incline sleeper that you're aware of?

A. Yes.

Q. Okay. So --

A. Go ahead. Can I elaborate a little bit on the back angle of the car seat itself?

Q. Yes.

A. In the tests that we've done on car seats, we talk about car seats at 45 degrees. That is a car seat position for crash testing as installed in a vehicle. And quite specifically on the FMVSS 213 bench.

The FMVSS 213 bench has an incline of the seated surface of 15 degrees. So from horizontal that 213 bench is positioned 15 degrees. The car seat now has to be positioned on that 15 degrees, and the recommendation is at 45 degrees or less for airway management.

Take that same product and put it on a table. When we do the studies -- when we've done the studies in

the hospital that's not putting that on an FMVSS 213 bench, positioned 45 degrees, is why I keep bringing up the point of testing the car seats at zero to 45, somewhere in that range, when positioned on a table or on a hard surface. Right. That's not in the 213 bench.

Q. All right.

A. So that 45 degrees recommendation from the AAP for car seats it positioned at a 15-degree incline.

Q. Okay.

A. So potentially some of the competition I've tested on a table could have been at 30 degrees.

Q. Okay. But these are car seats, these are not meant to put the child in it for the child to go to sleep?

A. Yes. Right.

Q. And is it your understanding that this is being, that this product is being sold as a sleeper?

A. Yes.

Q. Do you feel like it's inherently dangerous?

A. Yes, I do. I do.

Q. Do you feel like it's not for its intended use as a sleeper?

A. As a sleeper, yes.

Q. And do you feel like it doesn't give an adequate warning to the consumer where it's located on the

product?
A. Yes.
Q. That's it.

EXAMINATION

BY MR. HINES:
Q. Can we agree on one thing, the Rock 'n Play is not a car seat?
A. It is not.
Q. You're saying it does not have competitors?
A. I'm saying that I don't know of any.
Q. That's all I have.
(Whereupon, the deposition concluded at approximately 4:42 p.m.)

CERTIFICATE

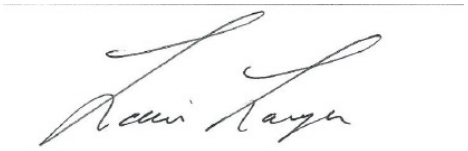
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

I, Laurie Langer, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am neither related to or employed by any of the parties in or counsel to this action, nor am I financially interested in the outcome of this action.

In witness whereof, I have hereunto set my hand and seal this 8th day of December, 2017.



NOTARY PUBLIC
Commission Expires
7/27/2023

DEPOSITION ERRATA SHEET

Our Assignment No: 186227

Case Caption: Goodrich vs. Fisher-Price, Inc.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the_____day of _____2017

_____

PAUL GAUDREAU, JR.

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PAUL GAUDREAU, JR.